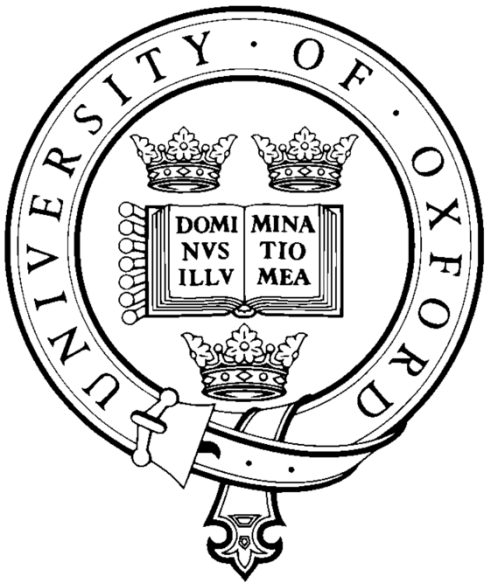
Trust in Trade in Barcelona and Mallorca, 1240-1350



Annabel Laura Hancock

Faculty of History
St. John's College, University of Oxford
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Supervisors: Professor Ian Forrest and Professor Julia Smith

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Short Abstract

This thesis asks how trusting relationships were formed and maintained between merchants and investors in Barcelona and Mallorca between 1240 and 1350. The variety of approaches to trust in 1432 notarial documents indicates that trust was never a given, but required constant thought and effort. The thesis explores this variety and asks what lay behind it.

Trusting relationships used and engaged with various legal and institutional frameworks, which all formed a part of the trust work needed for relationships related to long-distance trade to function. Merchants and investors relied in part on the courts and diplomatic work by the kings of Aragon to prevent attacks from foreign adversaries and to deal with everyday problems, including the redemption of merchant captives. But the lesson of the trust work in notarial documents is that the confidence to trade was not guaranteed by rulers and courts alone. Notaries were agents in the creation and maintenance of trust, but their contracts were created collaboratively with business clients to support individual trusting relationships.

Merchants and notaries managed risk and trust by making choices about language which would build the relationship required for each situation. These included choices related to assurances of repayment, judgements about the character and competence of merchants, and decisions to allow discretion in or constrain future actions. This language was shaped to some extent by factors such as the faith, familial ties, and gender of the parties. However, this thesis concludes that personal relationships were more important than generalised social characteristics. This is evident from a qualitative and quantitative analysis of the words and phrases deployed in notarial contracts to define and maintain trusting relationships.

Long Abstract

This thesis asks how trusting relationships were formed and maintained between merchants and investors in Barcelona and Mallorca between 1240 and 1350. The variety of approaches to trust in 1432 notarial documents indicates that trust was never a given, but required constant thought and effort. The thesis explores this variety and asks what lay behind it.

The study of merchants and investors in Catalonia 1240-1350 is particularly suited to the exploration of trust and relationships. The archives in Barcelona and Mallorca have preserved a wealth of material which has not yet been studied in depth and can reveal a complex and detailed world of social relationships. Due to the development of extensive commercial connections during this period in the Crown of Aragon, Catalan sources enable questions about interaction and connectivity to be central, allowing examination of how relationships were formed both within identity groups and between them. Notarial documents related to commerce in this period have not been analysed in detail. This study brings a wealth of information to light, transcribing previously unstudied documents to undertake qualitative and quantitative analysis. Most analysis in the thesis uses a database of transcribed sources from notarial registers written in Barcelona and Mallorca. Contracts in these registers were transcribed into a database for analysis, using *Symphytum*, a personal database software. In order to identify contracts for this study, 86 registers were examined and 1432 contracts were included in the database.

This research engages with a number of important modern debates, speaking to both understandings of trust and trust-making more widely and the way in which trade was conducted in the premodern period. Studies of trust in both the Social Sciences and History have looked to the concept of the natural 'group' as the foundation of trusting relationships. This thesis tests that idea, seeking to understand how important group identity was for the formation and maintenance of trust in the contracts of Barcelona and Mallorca, 1240-1350. It also seeks to question the dominant view that institutions were a solution to trust in a context of with limited knowledge, when humans are faced with uncertainty. Interpersonal

relationships are considered here, alongside institutions, to examine the ways in which medieval merchants and investors navigated relationships related to complex long-distance trades.

Growing from the examination of language-use in the documents, a new concept of 'trust work' is used to provide the intellectual framework for the thesis. Trust work is considered to be made up of varied and interlocking processes which built relationships in different ways. This framework combines the 'trading network' approach, which acknowledges the importance of interpersonal connections between people and groups, with a focus on document creation and language choice. Trust words and language as well as institutions do trust work which can be examined effectively through the combination of qualitative examination, analysing the varied trust phrases that were used and the way that these constructed relationships, and quantitative examination, analysing wider patterns of how trust phrases were used, revealing further meaning and providing essential context. This analysis seeks to foreground moments of trust making and centre the everyday emotional and interpersonal relationships at the heart of trust.

Merchants and notaries managed risk and trust by making choices about language which would build the relationship required for each situation. Management in the contracts was done through three key mechanisms: risk management, character management, and uncertainty management. Risk-management techniques provided one or both parties with a form of guarantee, through real-world solutions to problems related to payment and nonfeasance. Character-management techniques provided one or both parties with a form of assurance that they could and should put confidence in the person of the other party. This did not normally provide a clear solution to problems though could be legally enforceable. Character-management allowed parties to deal with the reputation and future intentions of people in the formation of trust. Uncertainty-management provided one or both parties with a form of flexibility or control through the granting of discretion or imposition of constraints, which enabled future unknowns to be managed and often explicitly relied upon the

competence and reputation of a party. The contracts used these three mechanisms to varying degrees to build the interpersonal trust relationship required in each situation.

Trusting relationships used and engaged with various legal and institutional frameworks, which all formed a part of the trust work needed for relationships related to long-distance trade to function. Institutional risk-management techniques provided security in relation to specific potential problems. Chapter 2 explores the role of the notary and his documents as officially-recognised legal records which functioned beyond the lives of the parties or notaries. This meant that contracts could be used in courts in the case of default or nonfeasance and act as evidence to the relationship. Chapter 3 examines a further institutional risk-management technique which provided security for merchants; the kings of Aragon were diplomatically active individuals who negotiated with foreign rulers for the benefit of Catalan merchants. Travelling parties placed their evidenced belief in the work done by the kings to negotiate with foreign rulers in relation to everyday problems and prevent foreign merchants capturing them. This extended to a possibility that the kings would work to redeem merchant captives and return them to their homelands.

Nevertheless, the lesson of the trust work in notarial documents is that the confidence to trade was not guaranteed by rulers and courts alone. Notaries were agents in the creation and maintenance of trust, but their contracts were created collaboratively with business clients to support individual trusting relationships. Linguistic risk-management techniques were used in notarial documents and chosen during the negotiation of the relationship. Pledges of goods, specific collateral, monetary penalties, and guarantors, explored in chapter 4, were offered in particular relationships to guarantee the investing party that their investment would be returned if there was a problem with the trading venture or with the travelling party.

Parties also engaged in trust work in the form of character management. Phrases took various forms and provided different kinds of assurances to each party. As shown in chapter 5, oaths assured the investing party that the travelling party was motivated to fulfil their

obligations, providing additional levels of religious punishment through excommunication and possibly community punishment, through reputational damage, should the travelling party fail in their obligations. As demonstrated in chapter 5, some parties also chose to commit to lawful behaviour, explicitly stating that they would obey the law, not commit fraud, and fulfil the obligations of the contract. These phrases provided a form of assurance in the future behaviour and character of the party. Character-management phrases in the form of promises to act and behave in a certain manner, such as to act faithfully assured the investing parties that the travelling merchants were competent and trustworthy individuals.

Chapter 6 explores how risk and uncertainty were built into the agreements. It examines the granting of discretion and imposition of constraints as part of a spectrum of reactions to the unknowns of long-distance trade which could not be controlled. These phrases created varied power dynamics between parties; flexibility for one could mean control for the other. Some discretion phrases explicitly called upon the competence and reputation of a merchant referring to their ability and judgement, demonstrating particular confidence and high levels of trust.

Chapters 4-6 analyse the effect of social factors on trust work, exploring how contract type, gender, and family relationships affected the mechanisms being examined. Chapter 7 explores how membership of religious communities affected the trust work undertaken by parties and the notarial documents created between them. It examines the role of Muslims and Jews in the contracts and the use of all three mechanisms in inter-religious and intra-religious groups.

Each time merchants and investors approached a notary in Barcelona and Mallorca, they were engaging in multiple processes at once, surrounded by all sorts of evidence and by potential relationships and decisions that they navigated. Merchants relied on their experiences, unconscious decision-making, and the conscious use of statistics and real-world information to navigate each situation. Each time the notary finished a contract a new and unique relationship had been created.

The contracts from 1240-1350 demonstrate the rich and subtle relationships which were central to Mediterranean trade and highlight the humanness of unique decisions made in each situation. There was no one-size-fits-all contract. Instead, the set allows us to uncover the feelings of individuals about each other, about the future, about their fears, and about the world of long-distance trade in specific and unique moments.

While the goal of the thesis was not to write a micro-history, the individual stories of each contract have revealed the importance of the decisions, actions, and emotions of each individual person in each moment. The famous micro-histories tend to study the meeting of one subjectivity with an institution. The notarial contracts of Barcelona and Mallorca instead provide scholars access to the voluntary meeting and negotiation of two subjectivities, aided by an institutional third party, which takes us close to the individual decisions being made in each moment. Rather than seeing commercial contracts as dry, non-human documents, the very humanness of each moment of creation is highlighted by close study of such a large body of material.

This thesis concludes that personal relationships were more important than generalised social characteristics. This is evident from a qualitative and quantitative analysis of the words and phrases deployed in notarial contracts to define and maintain trusting relationships. Overall, the documents tell nearly 1432 individual stories. Each contract formed a particular relationship, in which parties chose which risk, character, and uncertainty-management mechanisms suited their needs. These decisions were made with some level of reliance on the notarial institution and the diplomatic work of the kings of Aragon which each did their own trust work. Each part of trust work was not sufficient alone to deal with the risks and unknowns of long-distance trade across the Medieval Mediterranean. Rather, together they formed part of a series of interlocking and mutually-constitutive processes, which allowed the merchants to engage in complex and long-term trusting relationships.

For my mum and dad,

Sally-Ann and John

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Though it was sometimes a hard road, I was never on my own.

'I gave my blood, sweat, and tears for this.'

Taylor Swift, *You're on Your Own Kid,* 21 October 2022.

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List of Abbreviations

ACA	*Arxiu de la Corona d'Aragó*	(Archive of the Crown of Aragon)
ACB	*Arxiu Capitular de Barcelona*	(Archive of the Cathedral of Barcelona)
ACM	*Arxiu Capitular de la Catedral de Mallorca*	(Archive of the Cathedral of Mallorca)
ADB	*Arxiu Diocesà de Barcelona*	(Diocesan Archive of Barcelona)
AHPB	*Arxiu Històric de Protocols de Barcelona*	(Historic Archive of the Protocols of Barcelona)
ARM	*Arxiu del Regne de Mallorca*	(Archive of the Kingdom of Mallorca)
ECR	*Escribanía de Cartas Reales, Series Civitatis et Partis Foraneæ*	

Notarial contracts are referenced throughout in a way to make them as identifiable as possible. For example: 'ARM, ECR 344, 106r2' refers to the second entry on the recto side of folio 102 in the register labelled ECR 344 at the *Arxiu del Regne de Mallorca.*

Note on Transcription Practices, Currency, and Nomenclature

In quotations, '[___]' is used to indicated text that has been lost as a result of damage to the folio. Terms for which a translation cannot be found have been marked with '[?]'. Some punctuation has been added for clarity of meaning though the spellings found in the documents have been maintained.

Coinages in the Crown of Aragon were mainly based on the *denarius/diner*. The *diner de tern* of Barcelona (12d. = 1 solidus, 20s. = £1) was used by Catalan merchants. Pounds, shillings, and pence from Montpellier were commonly used in Mallorcan trades, labelled as

'melguerense'. Gold bezants were also used by Catalan merchants, coins produced by the Byzantine Empire, and later Islamic lands such as Egypt.

For more on coinages, see David Abulafia, *A Mediterranean Emporium: The Catalan Kingdom of Majorca*, (Cambridge University Press, 1994); Peter Spufford, *Money and its use in medieval Europe,* (Cambridge University Press, 1988); Richard Kelleher, "From the Commercial Revolution to the Black Death (c.1150–1350)," in *Money and Coinage in the Middle Ages*, ed. Rory Naismith (Brill, 2018).

In general, names are given as they appear in the document being referenced. This means most names appear in their Latin form. Though it is common for scholars to expand abbreviations of names ('P' becomes 'Petrus'), this is based on presumptions about the correct expansions of initials. Many letters could mean a variety of names. 'J' could refer to 'Jacobus' or 'Johannes,' 'G' could mean 'Geraldus' or 'Guillelmus,' while 'F' could mean 'Ferrer' or 'Ferrarius.' This is noted by M. Carme Coll Font, "El Llibre Manual de Pere Romeu, notari públic de Mallorca (1239-1243)," (PhD Diss., Universitat de les Illes Balears, 2012), 37. Rather than presume, I present the information as accurately as possible. Similarly, following mention of their full name, subsequent references to individuals will be referred to by their surname rather than first name; after a reference to 'Jaume Dierga,' subsequent references would be to 'Dierga,' not 'Jaume.' Given that some first names cannot be confidently expanded from an abbreviated initial, this also serves to ensure clarity and consistency. The decision also related to a desire to equalise gender treatment. Names of rulers and well-known figures are given in the Catalan, such as Jaume I, reflecting the way in which they were identified in vernacular documents of the region. Arabic names of rulers are written out in the Latin alphabet, following the spellings generally used in modern historical scholarship.

Chapter 1 – Introduction

1.1: Catalans at sea

In the thirteenth and fourteenth centuries, the Crown of Aragon became a dominant mercantile power, engaging with and even challenging the great trading cities of Venice and Genoa. Barcelona and Ciutat de Mallorca (today known as Palma[1]) were its central hubs for investors and merchants. The former, the centre of royal power in the Crown of Aragon was home to a majority Christian and minority Jewish population. Ciutat de Mallorca was conquered from Muslim rulers by Jaume I of Aragon in 1229-31. Despite considerable Catalan repopulation, the island was home to important Jewish and Muslim communities which included both investors and merchants. The name used to describe the subjects of the King of Aragon was Catalan, indicative of cultural unity, and in contemporary documents merchants described themselves as Catalan. This will therefore be the term of identification used here.[2]

Though the lands of the Crown of Aragon were in many ways composed of complex and weak ties between various territories, it was an economic powerhouse with centres in Barcelona, Ciutat de Mallorca, and Valencia, as well as other lesser cities.[3] Barcelona became an important distribution centre, attracting Italian merchants. Its own merchants, by this time, were already visiting ports across the Mediterranean, including Genoa, Pisa, and Sicily. Mallorca was an important waypoint between the north and west Mediterranean and southern

[1] La Ciutat was renamed to Palma during the eighteenth-century Bourbon reforms. Modern-day locals still use the medieval term. See, Kevin D. Mummey, "Women, Slavery, and Community on the Island of Mallorca, ca. 1360-1390" (PhD Diss., University of Minnesota, 2013), 1.
[2] Flocel Sabaté, "The Crown of Aragon in Itself and Overseas: A Singular Mediterranean Empire," in *The Crown of Aragon: A Singular Mediterranean Empire*, ed. Flocel Sabaté. (Brill, 2017), 12; Flocel Sabaté, "L'idéal politique et la nation catalane: la terre, le roi et le mythe des origines," in *La légitimité implicite*, ed. Jean-Philippe Genet, (CNRS Éditions, 2015), 2; Flocel Sabaté, "Identities in Contact in the Mediterranean," in Sabaté, *The Crown of Aragon*, 441-442.
[3] David Abulafia, "The Catalans and the Mediterranean," in Sabaté, *The Crown of Aragon*, 515.

Spain and the North African coast.[4] By the end of the twelfth century, trade routes to the Eastern Mediterranean were established; Catalans were trading in the part of the world that corresponded to the old Byzantine Empire (called 'Romania' in the notarial contracts), Syria, and Egypt.[5] Foreign trade was particularly dynamic between 1225 and 1290.[6] Textiles were a common export from Catalan shores while spices, raw materials, food stuffs (such as figs) and low-quality textile dyes returned from the Middle East. Other common products included olive oil, leather, wool, and iron.[7] 'Spices' referred to a range of goods, including foodstuffs like sugar, pharmaceutical ingredients, like gum, and raw materials and dyes, like indigo.[8] The mid-fourteenth century saw economic and social crisis reach a peak in 1348-1350 when the Black Death greatly reduced the population.[9] This study ends in 1350, leaving the consequences of crisis on the trust work and culture of trust explored here to later examination.

In order to create and officially record investments and sales, traders went before notaries, whose documents form the centre of this investigation. Coulon and Braudel note that in long-distance trade merchants had less control over the processes, leading to more speculative practices, escaping the rules and normal controls.[10] As a result, merchants in Catalonia had no choice but to rely on complex trust relationships. Investments were made into long-distance trades with deferred repayment, often by several months, requiring negotiation of long-term trust. Trading ventures were also far from a guaranteed success, with

[4] Charles-Emmanuel Dufourcq, *L'Espagne Catalane et le Maghrib aux XIIIe et XIVe siècles, de la Bataille de Las Navas de Tolosa (1212) à l'avènement du Sultan Mérinide Abou-l-Hazzan (1331)* (Presses universitaires de France, 1966), 577.
[5] Sabaté, "The Crown of Aragon", 10-11; Damien Coulon, "The Commercial Influence of the Crown of Aragon in the Eastern Mediterranean (Thirteenth-Fifteenth Centuries)," in Sabaté, *The Crown of Aragon*.
[6] Antoni Riera, "The Beginnings of Urban Manufacturing and Long Distance Trade," in Sabaté, *The Crown of Aragon*, 217, 220, 228-229.
[7] Sabaté, "The Crown of Aragon," 10-11; Edwin S. Hunt and James Murray, *A History of Business in Medieval Europe, 1200–1550* (Cambridge University Press, 1999), 83; Riera, "The Beginnings of Urban Manufacturing." 201-236.
[8] Coulon, "Commercial Influence," 282.
[9] Antoni Riera, "Crises and Change in the Late Middle Ages," in Sabaté, *The Crown of Aragon*, 237.
[10] Coulon, "Commercial Influence," 282-283; Fernand Braudel, *La dynamique du capitalisme* (Flammarion, 1985), 58.

the possibility of loss of goods through storms, piracy, and shipwrecks, while unknown market conditions at destination ports made costs and profits unpredictable. This thesis explores the ways in which these relationships were negotiated and specifically how language was used to communicate trust and manage risk.

The study of merchants and investors in Catalonia 1240-1350 is particularly suited to the exploration of trust and relationships. The archives in Barcelona and Mallorca have preserved a wealth of material which has not yet been studied in depth and can reveal a complex and detailed world of social relationships. Due to the development of extensive commercial connections during this period in the Crown of Aragon, Catalan sources enable questions about interaction and connectivity to be central, allowing examination of how relationships were formed both within identity groups and between them. Notarial documents related to commerce in this period have not been analysed in detail. This study brings a wealth of information to light, transcribing previously unstudied documents to undertake qualitative and quantitative analysis. Using the new concept of trust work, the thesis seeks to uncover how merchants and investors formed and maintained trusting relationships to mitigate the real-world and person-related risks and unknowns involved in long-distance ventures.

1.2: The study of trust in trade

1.2.1: The study of trust

Trust is a slippery word. When one uses the term trust a variety of things could be meant. One may be referring to a conscious decision, a belief or hope, confidence or reliance, or an emotion. Scholars in philosophy, psychology, sociology, and economics argue over the term, though they often use it in slightly different ways. Yuki and Brewer define trust as an expectation of positive treatment in uncertain or risky situations or a belief that others will act in a beneficial manner before one knows the outcome of others' behaviours.[11] Tropp defines trust as 'a social bond that is characterized by feelings of security and confidence in others' good intentions and goodwill.'[12] Others consider the word trust to be misused, mistakenly referring to concepts of calculation and coercion.[13]

Trust, confidence, and reliance, are all close terms. Hieronymi separates trust and reliance. When one relies on someone to do something, she works with the 'supposition that she will do it'. A trickster can rely on you to do something without trusting you. Though connected, Hieronymi reminds us that 'trust requires something more: a vulnerability' to feel betrayal if let down by the other person.[14] This vulnerability can also be seen as a form of risk, as the truster does not possess control over the situation.[15] Lahno argues that 'trust is an attitude that enables us to cope with risk in a certain way.'[16] It is related to, but not synonymous with, concepts of confidence and reliance.

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[11] Masaki Yuki et al., "Cross cultural differences in relationship and group based trust," *Personality and Social Psychology Bulletin* 31, no. 1, (2004): 50.
[12] Linda R. Tropp, "The Role of Trust in Intergroup Contact: Its Significance and Implications for Improving Relations between Groups," in *Improving Intergroup Relations: Building on the Legacy of Thomas F. Pettigrew*, eds. Ulrich Wagner, Linda R. Tropp, and Gillian Finchilescu. (Blackwell Publishing, 2008), 93-4.
[13] Ian Forrest, *Trustworthy Men: How Inequality and Faith Made the Medieval Church* (Princeton University Press, 2020), 35; Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity*, (Penguin, 1996).
[14] Pamela Hieronymi, "The reasons of trust," *Australasian Journal of Philosophy* 86, no. 2 (2008): 215.
[15] Bernd Lahno, "On the Emotional Character of Trust," *Ethical Theory and Moral Practice* 4 (2001): 171.
[16] Lahno, "Emotional Character," 171.

One of the major problems to grapple with is that not all trusting processes were conscious. Followers of Rational Choice Theory (RCT) argue that trust is simply the weighing up of options; humans calculate the trustworthiness of others and the benefits of placing trust in another, making the most rational choice.[17] However, this approach has faced substantial criticism that 'it assumes an idealised model of human nature,' resorting to reductionist explanations which ignore culture, identity, and social connections.[18] Hecher and Kanazawa remind us that humans often act impulsively, emotionally, or by force of habit.[19] Others argue that social norms, such as friendship, love and respect, are distinct from rational instruments and treat trust as a phenomenon to be seen as 'beyond rationality.'[20] Lahno, for example, emphasises that trust is not necessarily a result of rational consideration, but also an emotion.[21] Emotions guide our thoughts and affect our perception of the world and the judgements which we make.[22] Much of the process of trusting is subconscious, not due to a particular moment of decision or awareness.

A second key problem considered in studies of trust is the connection between interpersonal relationships and institutions. Cook et al. note that institutions can be seen as providing a defence against untrustworthy behaviour. They see modern state institutions as supports to cooperation between people by providing third party enforcement and security of exchange.[23] The effects that institutions have on the way that trust functions has been central to a great deal of discussion, both in the social sciences and in studies of historical trust. North finds institutions to be a solution to such uncertainty. He defines institutions as 'the rules of the game in a society' or 'the humanly devised constraints that shape human interaction.' It

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[17] Karen S. Cook and Alexa Santana, "Trust and Rational Choice," in *The Oxford Handbook of Social and Political Trust,* ed. Eric M. Uslaner (Oxford University Press, 2017), 254-5.
[18] Ibid., 258.
[19] Michael Hechter and Satoshi Kanazawa, "Sociological Rational Choice Theory," *Annual Review of Sociology* 23, no. 1 (1997): 192.
[20] Cook and Santana, "Rational Choice," 259.
[21] Lahno, "Emotional Character," 172-3, 177.
[22] Ibid., 175.
[23] Karen S. Cook, Margaret Levi, and Russell Hardin, "Introduction," in *Whom Can We Trust? How Groups, Networks and Institutions Make Trust Possible,* eds. Karen S. Cook, Margaret Levi, and Russell Hardin (Russell Sage Foundation, 2009), 4.

is institutions, he argues, that 'reduce uncertainty by providing a structure to everyday life' providing constraints to structure interactions.[24] For North the transformation from decisions based on uncertainty into risk, involving actuarial determination of the likelihood that an event is possible, was central to the shift from the medieval to the early modern period.[25]

The role institutions played in the development of trusting relationships over time has been central to the discussion of trust in the past. Historians have to work against the conception that the 'pre-modern era' was a time in which trust barely existed. Narratives of trust present a transition from times of automatic and unquestioning solidarity in the small village setting, to the breaking of close social bonds and the need for the placement of trust in institutions rather than humans.[26] Giddens, for example, has argued that pre-modern societies functioned on a form of 'basic trust' which relied on communities, kinship ties, and friendships. He compared this simple state to the abstract systems and impersonal institutions of the modern world.[27] Seligman sees the premodern era as the end of 'trust rooted in shared religious beliefs, kinship consanguinity, or territorial proximity.'[28] Luhmann too, argues that the concepts of both 'risk' and 'trust' (or at least the need for trust) were modern inventions.[29] Historians, too, have been guilty of following a teleological narrative in which society replaced local and interpersonal trust with institutions. Muldrew, for example, argues that medieval honesty and faithfulness to God were replaced with modern legal enforcement and contractual (or institutional) trust.[30]

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[24] Douglass C. North, *Institutions, Institutional Change and Economic Performance.* (Cambridge University Press, 1990), 3.
[25] Ibid., 126.
[26] Forrest, *Trustworthy Men*, 35.
[27] Adam B. Seligman, *The Problem of Trust*, (Princeton University Press, 1997), 17-8; Anthony Giddens, *The Consequences of Modernity*, (Polity, 1990), 114-116.
[28] Seligman, *Problem of Trust*, 19-20.
[29] Seligman, *Problem of Trust*, 18; Niklas Luhmann, 'Familiarity, Confidence, Trust: Problems and Alternatives', in *Trust: Making and Breaking Cooperative Relations*, ed. Diego Gambetta (Basil Blackwell: 2000), 102.
[30] Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Macmillan, 1998), 133–34.

This leaves historians with a series of problems which need to be navigated to study historical trust. Forrest and Haour present one way forward to examine trust in a multifaced manner. They take trust to be subject to constant negotiation through physical and linguistic performances. It is seen as cultural *and* economic, a human decision and emotion. Created in specific moments rather than arising naturally from culture, trust requires learning and negotiation, rather than possession of an essential similarity. It can take a lengthy time to build up and can be lost quickly.[31] This requires us to examine trust in an open, multifaceted way, considering how institutions, personal agency, and emotions can foster and maintain trust. Discussions of trust cannot ignore that we are really talking about *feelings* about the unknown future.[32] Along similar lines, Cook and Santana argue that contracts and enforcement institutions alone cannot explain trust. Instead of removing the need for trust, the use of contracts changes its nature.[33] Similarly, Forrest has shown that the pre-modern community was not simply replaced with 'modern' legal rights in High Medieval England, arguing for a more nuanced approach to historical trust.[34]

An understanding of trust as an emotion and set of behaviours combined with an acknowledgment of the importance of institutions enables us to study something of the range of trust in the premodern era. In this study, trust is examined through a study of decisions and behaviours in trade contracts between merchants and investors considering it part of an interpersonal relationship. Trust needs 'work' each time that it is required; trust is historically contingent and multifaceted, never a given but requiring ongoing and varied work.[35] The new concept of 'trust work' is used in this study to consider how trust language as well as individual

[31] Ian Forrest and Anne Haour, "Trust in Long-Distance Relationships, 1000–1600ce," *Past & Present* 238(suppl_13) (2018).
[32] Geffrey Hosking, *Trust: A History* (Oxford University Press, 2014), 2.
[33] Cook and Santana, "Rational Choice," 260.
[34] Forrest, *Trustworthy Men*, 35.
[35] Trust work here used as a term like emotion work. Frevert has argued for trust to be considered as a form of work using modern German historical approaches: Ute Frevert, "Trust as work," in *Work in a Modern Society: The German Historical Experience in Comparative Perspective*, ed. Jürgen Kocka (Berghahn Books, 2010).

decisions and actions constructed relationships and connections between individuals. As a new framework for the study of historical trust, the concept needs to consider conscious and unconscious trust making decisions, institutions and individual decisions and behaviours, and ways in which people dealt with uncertainty beyond the institution.

Scholars in the social sciences have two main ways of studying trust: direct means primarily rely on self-reporting of trust; indirect means seek to infer trusting expectations by observing decisions, behaviours, and reactions.[36] This thesis uses the concept of trust work to combine these approaches, identifying decisions and behaviours as well as the ways in which trust language was used by individuals in the thirteenth and fourteenth centuries. Using direct and indirect measures through the concept of trust work enables exploration of the various processes and choices which built the relationships required by merchants.[37]

1.2.2: The study of historical trust in trade

Historical examinations of medieval long-distance trade, a topic brought to life initially by Curtin, engaged with issues of trust from the beginning, even if an analysis of historically-specific trust was not the stated goal.[38] Scholars such as Curtin and Bentley, sought to explain how long-distance economic relationships could function when direct monitoring and simultaneous exchange of goods and payment was rare if impossible; essentially how and why people trusted each other to follow through on their economic agreements in situations

[36] Paul C. Bauer and Markus Freitag, "Measuring Trust," in *The Oxford Handbook*, ed. Uslaner, 15-36, 17-18.
[37] Ibid., 17.
[38] Philip D. Curtin, *Cross-Cultural Trade in World History, Studies in Comparative World History,* (Cambridge University Press, 1984).

of limited knowledge.[39] Borrowing from Cohen, an anthropologist specialising in West Africa, Curtin argued that the answer was the 'trading diaspora', defined as a group of merchants from a single community, who create a colony in a foreign town. They filled a space in the economy and acted as traders between the two communities. These 'merchant diasporas' were of a homogeneous cultural identity, distinct from the host society, and learned to be 'cultural brokers' facilitating trade.[40]

This concept of 'trade diasporas' has been central to many studies of long-distance trade. Greif uses the model of a homogeneous and discrete diaspora to examine the 'Maghribi traders' through the Cairo Geniza documentation. He argues that the merchants formed a 'coalition', a closed group based on religion and cultural identity, which relied on a 'reputation mechanism' to encourage 'trustworthy' behaviour from fellow group members.[41] This meant that ingroup members followed behavioural norms and did not cheat fellow group members because the long-term possibility of future contracts and profit outweighed the short-term benefits from cheating and losing ingroup status.

However, diaspora studies are problematic in their approach to trust. As noted by Trivellato, among others, one of the key problems with Curtin's argument is his presumption that discrete and homogeneous identity groups are a natural part of social life.[42] This 'groupism' has haunted studies of long-distance trade as scholars of the 'trade diaspora' school have treated merchant communities labelled as trade diasporas as 'communities of mercantile trust', and therefore given the impression that trust was a natural by-product of identity-based communities.[43] Aslanian further argues that the term 'trade diaspora' has been

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[39] Curtin, *Cross-Cultural Trade*; Jerry H. Bentley, *Old World Encounters: Cross-Cultural Contacts and Exchanges in Pre-Modern Times,* (Oxford University Press, 1993).
[40] Curtin, *Cross-Cultural Trade;* Sebouh David Aslanian, *From the Indian Ocean to the Mediterranean: The Global Trade Networks of Armenian Merchants from New Julfa* (University of California Press, 2010), chap. 1.
[41] Avner Greif, "Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders," *The Journal of Economic History* 49, no. 4 (1989).
[42] Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (Yale University Press, 2009), 11.
[43] Trivellato, *Familiarity of Strangers,* 11; Francesca Trivellato, "Sephardic Merchants in the Early Modern Atlantic and Beyond: Towards a Comparative Historical Approach to Business Cooperation," in *Atlantic*

used descriptively rather than as an analytical category to forward investigation; the term has been applied to a wide variety of trading communities across periods, despite few, if any, shared characteristics.[44] A focus on a cohesive diaspora identity has hindered investigations and limited scholars' questions and analysis. Edwards and Ogilvie suggest as much in their critique of Greif's analysis of the Maghribi traders, arguing that he overstates their 'collectivist' focus and that a closed and exclusive community cannot be evidenced.[45]

Like sociological explanations for trust in the modern world, explanations for the development of trade in situations of high risk in the medieval period have looked to institutions as a solution to trust with limited knowledge, when humans are faced with uncertainty. Scholars such as Spufford and Greif point to the development of legal systems and documentary technologies as central to trading relationships and the creation of impersonal markets.[46] Edward and Ogilvie argue for the centrality of legal mechanisms in the development of trade amongst the Maghribi traders as well as the merchant communities of medieval Italy.[47] Goldberg takes a similar view, emphasising the importance of the legal system to the activities of the twelfth century Geniza merchants, looking to the supervision of political structures and the state.[48] However, these economic approaches tend to follow flawed approaches to trust, seeing it as a modern concept managed by increasing technologies. Therefore, they argue that legal authorities decrease reliance on family and community obligations over time and, much like Muldrew and Seligman, see the replacement of individual trust with institutional control.[49]

Diasporas: Jews, Conversos, and Crypto-Jews in the Age of Mercantilism, 1500-1800, ed. Richard L. Kagan and Philip D. Morgan (Johns Hopkins University Press, 2009), 102; Aslanian, *Indian Ocean*, chap. 7.

[44] Aslanian, *Indian Ocean*, chap. 1.

[45] Jeremy Edwards and Sheilagh Ogilvie, "Contract Enforcement, Institutions, and Social Capital: The Maghribi Traders Reappraised," *Economic History Review* 65, no. 2 (2012): 421–44.

[46] Peter Spufford, *Power and Profit: The Merchant in Medieval Europe* (Thames & Hudson, 2002); Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade, Political Economy of Institutions and Decisions* (Cambridge University Press, 2006).

[47] Edwards and Ogilvie, "Contract Enforcement."

[48] Jessica L. Goldberg, *Trade and Institutions in the Medieval Mediterranean: The Geniza Merchants and their Business World*, (Cambridge University Press, 2012).

[49] Trivellato, *Familiarity of Strangers,* 3-4.

More recent studies have reacted against these two models. In his examination of early-modern Julfan Armenian traders, Aslanian combines cultural, social, and institutional explanations of the development and maintenance of trust amongst the merchant community. He explores how merchants communicated and formed economic trusting relationships across the Indian Ocean. Instead of using the term 'trade diaspora', he examines the merchants as part of a 'trade network', enabling a focus on circulation, mobility, and communication.[50] Rather than understanding trust as a given or natural part of family and kinship relations, Aslanian views trust as a commodity created by merchants, using 'social capital theory', developed by Coleman and Putnam from the ideas of Bourdieu, to explain the process. He defines social capital as the value generated when individuals come together and invest resources in the formation of structured relationships; the social network generates collective and individual benefits to enable the individuals to achieve their common goals, such as economic success. Fostering trust and trustworthiness, he argues, is one, although not the only, way in which social capital helped to promote collective action towards this common goal.[51] Developing ideas from Greif on the 'multi-lateral reputation mechanism', he argues that 'rigorous monitoring' of merchant behaviour, alongside the rewarding and punishing of good/fraudulent behaviour fostered trust within the social network.[52] Perhaps most important to Aslanian's approach is the combination of an investigation of 'semiformal legal institutions' (the church and Assembly of Merchants in Julfa) alongside and in conversation with the network and 'reputation mechanism' approach.[53]

In a similar move, Trivellato argues that scholars should work against the two dominant approaches to long-distance trade: the diaspora which pays little attention to how strangers made deals or a focus on individual cross-cultural transactions which are seen as unusual and enabled by the creation of more secure institutions. Neither, she argues, pays enough

[50] Aslanian, *Indian Ocean*, chap. 1.
[51] Ibid., chap. 7.
[52] Ibid., chaps 1, 7.
[53] Ibid., chap. 7.

attention to exploring actual transactions between strangers.[54] In her study of Sephardic Jews in early modern Livorno, she engages with trade diaspora approaches but argues against essentialising understandings of trust as natural and self-evident within cohesive merchant communities; trustworthiness is not a stable attribute of an individual or group and membership of the diaspora facilitated but did not ensure bonds of trust.[55] She argues that we need to look at choices of individuals based on their strategic interactions with others as well as their management of contexts beyond their control, such as shared communication codes and social norms.[56] She therefore examines how the community of Sephardic merchants combined social, cultural, and legal mechanisms to secure trust and cooperation.[57]

Importantly, Trivellato argues for the examination of both formal and informal institutions. She examines merchant recourse to legal institutions alongside informal contract enforcement in the form of 'reputational mechanisms', again following Greif. Like Aslanian, Trivellato explores the world of Sephardic Jews through the language of social networks and focuses on the role communication and information sharing played in the formation and maintenance of trust. She argues that thinking in terms of social networks allows us to navigate between the two common assumptions about trust: the essentialist approach which argues that we trust others because they are coreligionists and assumptions based on the equalising power of legal institution which argue that we do not trust anyone but know that the law will ensure contract enforcement for us.[58]

Both Aslanian and Trivellato explore the importance of institutions to long-distance trade while taking cultural relations into consideration and looking at how language choices affected the formation of relationships. These approaches explore a culturally-inflected economic history, considering the effects of institutional and legal contexts but also the extent

[54] Trivellato, *Familiarity of Strangers,* 15.
[55] Ibid., 8-9, 11-12.
[56] Ibid., 16.
[57] Ibid., 4-5.
[58] Ibid., 163.

to which culture can be seen as a predeterminant of trust, dismissing essentialising views of intra-community relationships.

This thesis follows a similar approach, using the concept of trust work to combine the 'trading network' approach, which acknowledges the importance of interpersonal connections between people and groups, with a focus on document creation and language choice. Beginning with Clanchy's, *From Memory to Written Record,* a number of scholars have followed his lead in emphasising the importance of trust in and created by writing and recording.[59] Arlinghaus considers the physical importance of documents in agreement making, arguing that it is not the content but the possibility of referring to a written document that is the core element of trust in writing.[60] This means that disputing parties have a form of common ground in mutual agreements that the text is important and can be referred to.[61] Following Arlinghaus, Szende questions the extent to which writing and textual documents could inspire trust between parties, especially those of different religions. She examines the ways that language choices (Hebrew and Latin), dating systems, and the storage of documents affected their status as trustworthy objects, 'facilitating and regulating Jewish-Christian relationships in everyday matters.'[62]

Further to considerations of the agency of documents, scholars have delved deeper into the part played by language, such as the choices and impact of 'trust words', in the formation of trusting relationships. As Forrest argues, when considering trust, we must consider the realm of language as it is not just a signifier of an inner state but a 'constituent

[59] Michael T. Clanchy, *From Memory to Written Record: England, 1066-1307*, 3rd ed. (Wiley-Blackwell, 2012).
[60] Franz-Josef Arlinghaus, "Point of Reference: Trust and the Function of Written Agreements in a Late Medieval Town," in *Strategies of Writing: Studies on Text and Trust in the Middle Ages: Papers from "Trust in Writing in the Middle Ages (Utrecht 28-29 November 2002)*, ed. Petra Schulte, Marco Mostert, and Irene van Renswoude, (Brepols, 2008), 277, 298.
[61] Ibid., 285-286.
[62] Katalin Szende, *Trust, Authority, and the Written Word in the Royal Towns of Medieval Hungary*, (Brepols, 2018), chap. 5.

of reality'.[63] Trust words do not reflect the world but create and change the reality of people who used them. In other words, trust words do trust work.[64]

In her study, Trivellato briefly examines what she calls the 'language of obligations' focusing on references to friendship and God in eighteenth-century merchant correspondence.[65] She argues that this 'language of obligations' was based on a 'centuries-old vocabulary' related to social dependence, trustworthiness, and loyalty.[66] However, Trivellato does not examine the use or importance of 'trust words' in depth, instead focusing on wider conventions in the merchant letters, such as the 'highly ritualised etiquette' which she suggests morphed economic, social, and legal terms of exchange and credibility into obligations.[67]

Recognising the importance of individual choices takes the exploration of language and documentary practice a step further. The works of Smail encourage scholars to delve deeply into the individual relationships that can be seen in archival material. In downplaying the role of the state as a supplier of justice, he encourages us to consider people as agents *choosing* to engage in litigation, exploring the motives of individuals as emotionally invested in their choices of action.[68] Similarly, Goldberg's approach to the study of 900 commercial documents from the Cairo Geniza effectively combines close reading and content analysis with statistical analysis, something which also characterises the present study; interpersonal and linguistic analysis meets the contextual and large-scale.[69] This thesis builds on these approaches to the study of historical trust to consider the trust work done by merchants and

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[63] Alexey Tikhomirov, "Trust and Distrust in Exploring the Human Past: An Interview with Geoffrey Hosking, Francesca Trivellato, and Ian Forrest," *Journal of Modern European History* 18, no. 4 (2020): 388.
[64] J.L. Austin, *How to do Things with Words*, eds. J.O. Urmson and M. Sbisá (Harvard University Press, 1962).
[65] Trivellato, *Familiarity of Strangers*, 178-91.
[66] Ibid., 180.
[67] Ibid., 191.
[68] Daniel Lord Smail, *Legal Plunder: Households and Debt Collection in Late Medieval Europe* (Harvard University Press, 2016), 137; Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423* (Cornell University Press, 2013), 16–19.
[69] Goldberg, *Trade.*

notaries considering individual linguistic and documentary choices alongside institutions and wider social connections.

The new concept of trust work is used in order to effectively combine these approaches. Wubs-Mrozewicz asks scholars of trust to look more closely at the form and content of trust language, to look for the function.[70] The framework of trust work seeks to answer this call. Growing from the examination of trust language in the documents, trust work is considered to be made up of varied and interlocking processes which built relationships in different ways. Trust words and language as well as institutions do trust work which can be examined effectively through the combination of qualitative examination, analysing the varied trust phrases that were used and the way that these constructed relationships, and quantitative examination, analysing wider patterns of how trust phrases were used, revealing further meaning and providing essential context. This analysis seeks to foreground moments of trust making and centre the everyday emotional and interpersonal relationships at the heart of trust.

[70] Justyna Wubs-Mrozewicz, "The concept of language of trust and trustworthiness: (Why) history matters," *Journal of Trust Research* 10, no.1 (2020).

1.3: Notarial registers and archives – the sources

Most analysis in the thesis uses a database of transcribed sources from notarial registers written in Barcelona and Mallorca. Contracts in these registers were transcribed into a database for analysis, using *Symphytum*, a personal database software.[71] The registers are held in a variety of archives and varied states of preservation. While some notaries specialised in certain types of business, the registers in Catalonia reflect the varied work that notaries undertook. Entries in registers were ordered by time of writing, rather than type of contract.[72] As such they contain contracts related to a range of commercial and social relationships, including marriage certificates, last wills and testaments, and sales. For this study, contracts were recorded and transcribed only if they contained references to long-distance trade, considered to be the inclusion of terms related to voyages across water, vessels such as boats/ships, or locations outside of Catalonia or Mallorca.

In order to identify contracts for this study, 86 registers were examined, 23 in ACM, 36 in ARM, 23 in AHPB, and 4 in ACB. 136 contracts transcribed by Madurell i Marimon, mainly from ACB and AHPB, were also included.[73] In total, the database contains 1432 contracts (from here on, called the 'set'). The contracts were written in Latin, though three contracts included sections in the vernacular, Catalan.[74]

There are three main types of document that fell into the long-distance trade category. *Comanda* documents [75] brought together the labour of a travelling party (*comanditario/tractator*) and the capital of an investing party (*comandante/commendator*).[76]

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[71] *Symphytum*, accessed 11 September 2024, https://github.com/giowck/symphytum.
[72] Kathryn L.Reyerson and Debra A. Salata, eds., M*edieval Notaries and Their Acts: The 1327-1328 Register of Jean Holanie* (Medieval Institute Publications, 2004), 12.
[73] Josep Maria Madurell i Marimon and Arcadi Garcia i Sanz, *Comandas Comerciales Barcelonesas de la Baja Edad Media,* (Colegio Notarial de Barcelona, 1973); Arcadi Garcia i Sanz and Josep Maria Madurell i Marimon, *Societats Mercantils Medievals a Barcelona*, 2 vols., (Fundació Noguera, 1986).
[74] AHPB, Jaume Ferrer 19/5, 93v-94v
[75] In much literature the spelling is *commenda. Comanda* is used here following the Catalan tradition and reflecting usage in the documents themselves.
[76] Rafael Conde y Delgado De Molina, "Los Llull: una familia de la burguesia barcelona del siglo XIII," in *XI Congresso di Storia Della Corona D'Aragona, 1982, sul tema La società mediterranea all'epoca del*

They were a form of equity financing, in which investors shared a split of the profit and a share of the risk.[77] The capital could be used in various ways: *a esparç* (spread) investments required the travelling party to manage invested goods or money separately from his own; *simil cum meis mercibus* (along with my merchandise) investments required the invested goods or money were used together as a common fund with those of the travelling merchant; finally, a community could be made with all investments and was divided into shares. Each merchant normally took *comanda* investments from various investors.[78] There is general agreement amongst scholars that *comandas* developed in order to split the financial risks of ventures.[79]

A second significant document type in the set were ship loans or charters of ships. These read like *comanda* investments although merchants had slightly different roles. The shipmasters typically received goods or money from travelling merchants and travelled alongside them to the destination trading ports.

The third type was a *societas* (partnership) contract.[80] Zimmerman argues that these agreements pooled resources, such as money, expertise, or property for a common purpose. In these agreements, parties normally contributed both capital and labour; each member of the partnership pursued common interests, often investing themselves, receiving investments in the partnership from outsiders in the form of *comandas*, and conducting trade. The contracts created rights and duties between the partners, business was jointly managed,

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Vespro, (Accademia Di Scienze Lettere e Arti, 1983), 381, 384; John H. Pryor, "The working method of a thirteenth-century French notary: the example of Giraud Amalric and the Commenda contract." *Mediaeval Studies* 37, no.1 (1975): 434.

[77] Meir Kohn, "Risk Instruments in the Medieval and Early Modern Economy," *Dartmouth College, Department of Economics Working Paper No. 99-07,* (1999), 1-2; Susan Mosher Stuard, "Where Notaries Provided Legal Services to Medieval Townspeople," *Journal of Family History* 43, no. 3 (2018): 273.

[78] Riera, "The Beginnings," 221; Madurell i Marimon and Arcadi Garcia i Sanz, *Comandas Comerciales,* I, 94-96; María Dolores López Pérez, *La Corona de Aragón y el Magreb en el Siglo XIV (1331-1410)* (Institución Milá y Fontanals, 1995), 403-4.

[79] Kohn, "Risk Instruments," 1-2; Stuard, "Legal Services," 273.

[80] Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford University Press, 1996), 451.

and profits and losses were settled when the partnership was dissolved, proportionally to the capital contributed.[81]

While some contracts were more complex, with parties playing different roles, most involved two main parties. These are labelled here as the 'travelling party' or the person/people who agreed to make a voyage and travel to a distant port, and the 'investing party' or the person/people who invested money or goods into the venture. The investing party would not have undertaken the voyage.[82]

Some contracts comprised a main entry followed by 'subsidiary documents' which listed further investments in the same venture. The term 'subsidiary document' will be used to refer to these shortened agreements which followed a main contract and usually started with 'Item' ('also') or 'Simile instrumentum fiat' ('let a similar instrument be made') and often ended with 'ut supra' ('as above'). These subsidiary documents are included in the total of 1432 contracts in the database.

The registers preserved in the archives, also sometimes called cartularies, books, or protocols, were from different stages in the contract drafting process. The practice of document making in the *Països Catalans*, as well as other southern European areas, meant that each contract was recorded more than once. A notary guided the clients through the creation of a document by asking a series of questions, often based on a template for more complicated contracts.[83] The notary or a scribe employed and supervised by him, would write

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[81] Zimmermann, *Law*, 451, 455; Riera, "Beginnings," 221; Stuard, "Legal Services," 272-273; López Pérez, *La Corona de Aragón*, 416-18.

[82] Stefania Gialdroni, "Propter Conversationem Diversarum Gentium: Migrating Words and Merchants in Medieval Pisa," in *Migrating Words, Migrating Merchants, Migrating Law: Trading Routes and the Development of Commercial Law*, eds. Stefania Gialdroni, Albrecht Cordes, Serge Dauchy, Dave De ruysscher, and Heikki Pihlajamäki (Brill, 2020), 38.

[83] Using late-fourteenth century sources from Barcelona, Maria Teresa Ferrer i Mallol has identified the main steps in the creation of a notarial act: Maria Teresa Ferrer i Mallol, "La redacció de l'instrument notarial a Catalunya. Cèdules, manuals, llibres i cartes," *Estudis d'història i documents dels arxius de protocols* 4 (1974): 29–191; see also Rebecca Winer, "Jews in and out of Latin Notarial Culture: Analyzing Hebrew Notations on Latin Contracts in Thirteenth-Century Perpignan and Barcelona," in *Entangled Histories: Knowledge, Authority, and Jewish Culture in the Thirteenth Century*, eds. Ruth Mazo Karras, Elisheva Baumgarten, and Katelyn Mesler (University of Pennsylvania Press, 2017), 118.

initial notes and a sketch of the agreement in a register, known as *notula, imbreviatura,* or in the *Països Catalans*, *capbreu*, in a highly abbreviated form.[84] Then the *charta/mundum* or *instrumentum publicum*, the definitive document, was produced on parchment for the parties to take away.[85] Perhaps as a response to the frequently over-abbreviated and difficult to interpret *capbreus* common among early Catalan notaries, a system of double annotation of two series of registers developed, the *manualia, notula, minute,* or *nota* and *capibrevaia* (*capbreu*), *libri notularum*, or *protocollum* as well as the instrument itself on parchment. Rather than an over abbreviated version, the term *capbreu* was now used to refer to registers/volumes of fully expanded version of the contracts. The development of the manual at this time was, according to Pagarolas i Sabaté, about a century behind practice in Genoa as the first manual books are found in northern Italy in mid-twelfth century.[86] The manual served as a memory of the writing that needed to then be extended and written out in full into the register. Once the document passed into the register, now called a *capbreu*, the manual was redundant. Writing in manuals was normally dense with numerous corrections, empty spaces left to be filled in at a later point, and abbreviations.[87] This register (*capbreu*, *liber notularum,* or *protocollum*) contained complete texts of the agreements.[88] Most of the registers in the archives appear to be from the final stage of document production. In other words, they were the *capbreu* or protocol.

Pagaroles i Sabaté and Baiges state that when the document was copied from the manual into the *capbreu* the manual version was often marked with vertical lines and a

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[84] Laureà Pagarolas i Sabaté, "Gènesi i Evolució Dels Registres Notarials (s. XIII-XIX)," in *Actes Del II Congrés d'Història Del Notariat Català,* eds. Juan José López Burniol and Josep Maria Sans i Travé. (Fundació Noguera, 1994), 165; Winer, "Jews," 118.
[85] Pagarolas i Sabaté, "Gènesi," 163–64.
[86] Ibid., 165.
[87] Pagarolas i Sabaté, "Gènesi," 170-172; Ignasi J. Baiges, "El Notariat Català: Origen i Evolució," in *Actes Del I Congrés d'Història Del Notariat Català: Barcleona, 11, 12, i 13 de Novembre de 1993*, ed. Josep Maria Sans i Travé (Fundació Noguera, 1994), 155; Laureà Pagarolas i Sabaté, "Notariat i Cultura: Els Registres Notarials," in *Actes Del I Congrés*, 342–43; Reyerson and Salata, *Medieval notaries*, 21-22; Laurie Nussdorfer, *Brokers of Public Trust Notaries in Early Modern Rome* (Johns Hopkins University Press, 2009), 17.
[88] Pagarolas i Sabaté, "Gènesi," 182; Mummey, "Women," 20.

marginal note of which register contained it.[89] Cancellation of contracts was recorded in both the manual and *capbreu*/register through a written note in the margin and a wavy line across the surface of the document.[90] However, study of the registers shows that such protocol was not always followed and the two types of records are more difficult to separate. Some volumes which appear to be *capbreus* contain contracts which are crossed through with no cancellation note, while some volumes which appear to be *manuals* contain both fully written out and shorter, abbreviated documents. While some registers contain a variety of other notes in the margin related to the entries, such as the price for the creation of the notarial document, whether it was entered out of chronological order, and whether a copy was made for one of the parties, some remained unmarked and unannotated, making the status of the register more difficult to determine.[91]

In Catalan notarial practice, the origin of the obligation to keep a register is unknown. However, Pagarolas i Sabaté suggests that it likely became common practice in areas under the influence of the spread of Roman Law from the thirteenth century. We find mentions of registers in Catalan law codes from the 1280s.[92] Catalan registers are related to the Genoa tradition, though made of paper rather than parchment and were normally called *capibrevium* (or *capbreu*) rather than *protocollum.* They survive from the thirteenth century onwards. The earliest register in Catalonia is a fragment from a manual from Manresa written in 1222 though production (and survival) increased from c.1240.[93] Early examples are very concise with many abbreviations, using as much space on the page as possible, following the expected *manualia* or *nota* form.[94]

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[89] Pagarolas i Sabaté, "Gènesi," 172.
[90] Baiges, "Notariat Català," 156; Elizabeth Comuzzi notes that there were two types of cancellation: in the first, the contract is immediately annulled, such that it never took effect. In the second, the contents of the contracts are voided after the agreement has been fulfilled and there are no outstanding obligations: Elizabeth Ann Comuzzi, "Economic and Demographic Change Through Notarial Sources: The Example of Puigcerdà 1260-1360," (PhD Diss., University of California, 2020), 39-40.
[91] Comuzzi, "Economic and Demographic," 39.
[92] Pagarolas i Sabaté, "Gènesi," 166-167.
[93] Ibid., 169.
[94] Pagarolas i Sabaté, "Gènesi," 168, 170; Pagarolas i Sabaté, "Notariat i Cultura," 345.

Other documents are examined alongside the notarial material (see Chapter 3). Registers from the *Arxiu Diocesà* de *Barcelona* (Diocesan Archive of Barcelona, ADB) contain records made by notaries working for bishops of the city. Diplomatic correspondence, in the form of Arabic letters, have been preserved in the *Arxiu de la Corona d'Aragó* (Archive of the Crown of Aragon, ACA). Transcriptions and Spanish translations of this diplomatic correspondence published by Alarcón y Santón and García de Linares have also been consulted.[95]

[95] Maximiliano A. Alarcón y Santón and Ramón García de Linares, *Los documentos árabes diplomáticos del Archivo de la Corona de Aragón* (Imprenta de E. Maestre, 1940); Roser Salicrú i Lluch is leading the project 'The Diplomatic Exchanges between Islamic Mediterranean Powers and Christian European Cities in the Middle Ages: New Methods for the Analysis of Documents' (CSIC), which will publish a new edition of the Arabic letters alongside their Romance translations.

1.4: Quantitative and qualitative analysis with social factors - methodology

This thesis combines qualitative and quantitative approaches to evidence, seeking to understand the ways in which trust was formed. Close examination of language use is placed into statistical context, to understand the commonality of expressions and relationships revealing patterns of meaning. A further goal of combined analysis is to compare how trust was formed and maintained both within and across what might be considered identity groups.

There has been recent interest in understanding how trust functions in situations where one must rely on others with whom there is no personal connection or interpersonal relationship.[96] This is an attempt to untangle the common presumption that trust mostly functions within groups; that strangers are considered untrustworthy. Categories may be based on a variety of shared categories, including religion, ethnicity, neighbourhood, citizenship, and kinship.[97] A central question in studies of trust, Cook et al. state, is how individuals determine who is trustworthy with limited evidence on which to base judgements and the extent to which people assume trustworthiness according to 'group-based assessments.'[98]

Sociologists have been particularly interested in examining the truth of this phenomenon. Tropp discusses the extent to which contact between people in different groups affected readiness to trust, working on the presumption that group solidarity meant greater levels of trust inside the group.[99] Uslaner, too, sees particularised trust as based on ties to an in-group, or trust in people only like yourself. This is compared to political trust, which is confidence in institutions, and social or generalised trust, not related to anyone in particular.[100]

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[96] Yuki et al., "Cross cultural differences," 50.
[97] E.g. see, Yuki et al., "Cross cultural differences," 59.
[98] Cook et al., "Introduction," 5.
[99] Tropp, "Intergroup Contact," 93.
[100] Eric M. Uslaner, "The Study of Trust," in *The Oxford Handbook*, ed. Uslaner, 4.

Newton et al. use the results from the 2010-2014 World Values Survey to show that trust decreases as the distance of social relation increases; people trust those socially closest to themselves.[101] Kramer too considers 'group-based trust' as a form of 'category-based trust' based on a set of assumptions, beliefs, and expectations held by members of one group in relation to another.[102] He references 'early and influential ethnographic research on ingroup bias' which showed that individuals tended to hold positive views about their ingroup members and negative views about outgroup members.[103]

Some examinations have taken a particularly nuanced approach. Cook et al. argue that we should not assume that those who share cultural markers always trust each other or that those whose markers are different never trust one another, citing examples of exploitation inside identity groups as evidence for a more complex and interpersonal study of the issue.[104] Nonetheless, they acknowledge that, when mutual advantage to ingroup cooperation was recognised, 'cultural markers may well serve as bases of trustworthiness that facilitate cooperation.'[105]

Ingroup trust alone cannot explain all relationships, however. The length of time of contact between individuals has been recognised as another central factor determining the formation of trust both within and between groups. Kramer notes that a long-term relationship between groups increases the level of trust; a cycle of mutual cooperation can lead to trust.[106] Bornhorst et al. demonstrate that, rather than acting as a static and time invariant cultural trait, trust and trustworthiness build up and evolve with experience of repeated interactions.[107]

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[101] Kenneth Newton et al. "Social and Poltical Trust," in *The Oxford Handbook*, ed. Uslaner, 45-46.
[102] Roderick M. Kramer, "Ingroup-Outgroup Trust: Barriers, Benefits, and Bridges," in *The Oxford Handbook,* ed. Uslaner, 97.
[103] Ibid., 98.
[104] Cook et al., "Introduction," 3.
[105] Ibid., 3.
[106] Kramer, "Ingroup-Outgroup Trust," 106. See also Margaret Foddy and Toshio Yamagishi, 'Group-Based Trust', in *Whom can we trust?*, ed. Cook et al.
[107] F. Bornhorst, A. Ichino, O. Kirchkamp, et al. "Similarities and differences when building trust: the role of cultures," *Experimental Economics* 13, (2010): 280.

Many studies of medieval trade have worked under a similar presumption, that people were more willing to trade and form trusting connections with people who were in their ingroup. This thesis tests these presumptions to understand how and why trust work varied. Therefore, a major part of this study is testing the significance of various social factors which defined group identity in the establishment of trading relationships. Analysis of the data tests hypotheses about the way in which social differences (such as gender or religious community) inhibited trust and therefore required a greater level of trust work. A further hypothesis to test is that familial and long-term relationships were based on high levels of preexisting trust, requiring less active trust work in the contracts.

As a result, questions about in-group and out-group trust loom large throughout this work. The linguistic analysis in chapters 4-7 questions to what extent groups and personal ties affected trust work in the past. Group solidarity built on the social factors of gender and family run throughout the thesis, while religion-based solidary is examined in chapter 7.

27 contracts (1.89% of the set) included familial connections between the contracting parties in the agreement. A further 23 contracts involved family members in a different way, with individuals from the same family on one side of the agreement. Therefore, in total, 50 contracts (3.49% of the set) involved family members in some way. Family and kinship groups have long been considered central to the functioning of medieval trade and natural producers of trust.[108] Hunt and Murray argue that medieval business relied on the family as a way to deal with the greater risks of premodern trade.[109] Hyams, too, presumes that ties of kinship and family, as well as lordship, aided commerce and business.[110] Stuard also argues that early

[108] E.g. Isabel Davis, "Introduction: Unfamiliar Families: Investigating Marriage and the Family in the Past," in *Love, Marriage, and Family Ties in the Later Middle Ages*, eds. Isabel Davis, Miriam Muller, and Sarah Rees Jones (Brepols, 2003), 4, 12-13; Matthew Howard, "'We are broderen': Fraternal Bonds and Familial Loyalty within the Fifteenth-Century Romance of Generydes," in *Love, Marriage, and Family,* eds. Davis et al.; Nada Zečević, "Brotherly Love and Brotherly Service: On the Relationship between Carlo and Leonardo Tocco," in *Love, Marriage, and Family,* eds. Davis et al., 144-145.
[109] Hunt and Murray, *History of Business*, 32-33
[110] Paul Hyams, "Faith, Fealty and Jewish 'Infideles' in Twelfth-Century England," in *Christians and Jews in Angevin England: The York Massacre of 1190, Narratives and Contexts*, eds. Sarah Rees Jones and Sethina Watson, (Boydell & Brewer, 2013), 138.

long-distance traders relied on their families and kinship ties, stating that even 'notarial instruments were based upon family pacts in most cases.'[111]

Identifying family names in notarial contracts is difficult due to varied spellings, name repetition, and use of localities as identifiers. Sometimes one person was identified by different names. For example, Jacobus Viloni was recorded under two different names in the same contract on 26 October 1340: 'Jacobus Viloni, civis Maioricæ, aliter vocati Jacobus de Villa' ('Jacobus Viloni, citizen of Mallorca, otherwise called Jacobus of the village').[112] Family connection has been counted when a familial label, such as father, or a unique and identifiable surname was used.

178 agreements in the set included either relationships between people of different religions or genders (Table 1.1):

Axis of difference	Number of documents
Gender	
Female party contracting with male party[113]	103
Female party contracting with male party, including a female guarantor[114]	1
Female co-party with a male contracting with male party[115]	17

[111] Stuard, "Legal Services," 272, 276.
[112] ACM, PRT-14564, 92v-93r.
[113] AHPB, Pere de Torre 6/1, 12r1, 40v2, 103v3-104r, 117r2, 118v1, 120v1; AHPB, Pere de Torre 6/2, 4v2, 36r [subsidiary docs. 9, 10, 11], 47r1, 71r4, 78r4, 90r2, 96r1, 102r3, 104r2, 108v1, 108v1-109r [subsidiary docs 6], 109v1, 142r2, 142r2 [subsidiary doc. 2], 142r3, 150v2, 164r2 [subsidiary doc. 5]; AHPB, Pere de Torre 6/3, 48v2-49r [subsidiary doc. 8], 79r1, 49r, 56v2, 77r1; AHPB, Pere de Torre 6/4, 48r2-48v, 89v2; AHPB, Bartomeu de Vilalta 7/1, 1v3-2r; AHPB, Llorenç de Canals 12/2, 34v2, 52r; AHPB, Jaume Ferrer 19/5, 42r [subsidiary doc. 5] 80v-83v, 81r-82r [subsidiary docs. 3, 5, 6, 14, 19], 92v [subsidiary doc. 2], 95r [subsidiary document 11], 97r-99r [subsidiary docs. 2, 6, 8], 100v [subsidiary docs. 2], bossa (archive image 209-210) [subsidiary docs. 3]; AHPB, Jaume Ferrer 19/3, 56v2, bossa (archive image 276, labelled as loose folio 23); AHPB, Jaume Ferrer 19/6, 5r2, 5r2-6r [subsidiary doc. 6], 25v1; AHPB, Jaume Ferrer 19/8, 88v2; ARM, ECR 343, 113v5-114r 126r4, 149v3, 183v4, 210r2, 246r1, 247r3; ARM, ECR 342, 36r1, 210v3, 27r2, 104v1, 149r4, 211v2; ACM, PRT-14545, 59r2; ACM, PRT-14546, 85v1; ACM, PRT-14554, 11v-12r, 14r1; ACM, PRT-14540, 115r1, 115r2, 211r3; ACM, PRT-14566, 23r-23v, 95v1; ACM, PRT-14564, 54v-55r, 58v-59r, 59r, 162v, 163r, 165v2-166r, 166v2-167r; ACM, PRT-14569, 103v2; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 21, 42, 43, 44, 50, 51, 52, 54, 57, 63, 72, 73, 78, 98, 103; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, docs. 5, 13, 27.
[114] ARM, ECR 342, 142v2.
[115] ARM, ECR 343, 116v5, 155v3, 169r1, 385v1; ARM, ECR 343, 139r3, 31r1, 38v1, 55r2, 91v5, 102v1, 102v2, 105v2, 105v3, 112r4, 166r4-166v; AHPB, Jaume Ferrer 19/5, 22v-23r; AHPB, Pere de Torre 6/1, 1r.

Female and male co-party contracting with female and male co-party[116]	1
Female party in cancellation note. Main document contains male contracting parties[117]	1
Religious community	
Male Jewish party contracting with male Christian party (inter-religious) [118]	28
Male Jewish party contracting with male Jewish party (intra-religious) [119]	12
Male Jewish witness with male Christian contracting parties[120]	1
Male Jewish guarantor with male Christian contracting parties[121]	1
Male Jewish guarantor and male Jewish witness with male Christian contracting parties[122]	1
Male Muslim party/parties contracting with male Christian party[123]	8
Gender and religious community	
Female Jewish party contracting with male Jewish party[124]	1
Female co-party with male Jewish party (presumed), contracting with Christian party, with Jewish witness[125]	1
Muslim party contracting with female party[126]	1
Muslim male and Muslim female co-party contracting with Christian party[127]	1
TOTAL	178

Table 1.1: Number of agreements with key social factors.

[116] ARM, ECR 342, 52r2.
[117] AHPB, Jaume Ferrer 19/5, 97r-99r [subsidiary doc. 3].
[118] ACM, PRT-14569, 3r, 34v-35r; AHPB, Pere de Torre 6/2, 23v2, 87r1, 102r1, 161v2, 178v3; ACM, PRT-14540, 85r1, 107r1; ARM, ECR 342, 4r1, 8r3, 134v1; ARM, ECR 343, 270v2, 274r3, 277r5, 297r1, 297r2; ARM, ECR 344, 66r2; ARM, ECR 345, 26r2; AHPB, Pere de Torre 6/1, 12r2, 59v1, 103r1; AHPB, Jaume Ferrer 19/5, 97r-99r [subsidiary docs. 9, 23]; ACM, PRT-14554, 61r1; ACM, PRT-14564, 116r2-117r; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 64.
[119] ACM, PRT-14540, 85r2-85v, 123r3; ACM, PRT-14569, 48r2, 48v; ACM, PRT-14545, 74v; AHPB, Pere de Torre 6/1, 79v2, 105v2; AHPB, Pere de Torre 6/2, 178r1; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 62, 67, 70, ; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, docs. 21.
[120] ARM, ECR 342, 52v5.
[121] ACM, PRT-14564, 119v2-120r.
[122] ACM, PRT-14569, 5v.
[123] ARM, ECR 343, 167v7-168r, 243v4-244r, 245r4; ARM, ECR 342, 109r4, 109v1, 160r4, 210v1; ACM, PPRT-14554, 60v3-61r.
[124] ACM, PRT-14545, 67r2.
[125] ARM, ECR 343, 166v5.
[126] ARM, ECR 343, 230r5.
[127] ARM, ECR 345, 23r1-23v.

The position of women in commerce was rather different. Rather than aiding the process, their legal status brought additional challenges to participating in Catalan business. Reyerson and Salata state that women had legal protections which prevented them from assuming liability for another's debt, (called '*senatus consultum Velleianum*'). As a result, to operate in mercantile documents they needed to renounce these protections. The renunciation gave them the ability to manage business themselves and on behalf of others.[128] Theoretically, the control of family wealth available to women was limited. Changing dowry practices limited the extent to which wives could control funds both before and after their husbands' death. Similarly, Gratian's writings supported the subordination of the wife to her husband on grounds of incapacity.[129]

Nevertheless, while women theoretically faced legal obstacles to property ownership and management in Iberia, it was not uncommon for women in Catalonia to own moveable and immoveable property inherited from their parents or from their husbands.[130] Batlle emphasises that married women had the ability to manage and invest money, and manage their inheritance.[131] Women in southern Europe were also known to represent themselves in court and act as witnesses.[132]

The thesis uses both qualitative and quantitative analysis to test the hypotheses that family, gender, and religious community affected the way in which parties engaged in trust

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[128] Reyerson and Salata, *Medieval Notaries*, 25; Peter Riesenberg, "Roman Law, Renunciations, and Business in the Twelfth and Thirteenth Centuries," in *Essays in Medieval Life and Thought*, eds. John H. Mundy, Richard W. Emery, and Benjamin N. Nelson (Cambridge University Press, 1955), 209; Marie A. Kelleher, "Later Medieval Law in Community Context," in *The Oxford Handbook of Women and Gender in Medieval Europe,* eds. Judith M. Bennett and Ruth Mazo Karras (Oxford University Press, 2013), 139.

[129] Stuard, "Legal Services," 274-275

[130] Carmen Batlle, "Noticias Sobre La Mujer Catalana en el Mundo de Los Negocios (Siglo XIII)," in *El Trabajo de las Mujeres en La Edad Media Hispana*, eds. Angela Muñoz Fernándex and Cristina Segura Graiño (Asociación Cultural Al-Mudayna, 1988), 211; Kelleher, "Later Medieval Law," 134-136.

[131] Batlle, "Noticias Sobre La Mujer Catalana," 212; studies of Genoa show that women had a similar ability to participate in credit and *comanda* networks: see Quentin Van Doosselaere, *Commercial agreements and social dynamics in medieval Genoa* (Cambridge University Press, 2009), 143.

[132] Smail, *The Consumption of Justice, passim*; Kelleher, "Later Medieval Law," 135.

work and formed trusting relationships for long-distance trade. Reyerson and Salata warn that notarial acts should be treated with care and are not a reliable basis for quantitative studies, due to partial survival.[133] However, partial survival of the material does not prevent comparisons between those contracts which do survive. The approach in this thesis is to compare the way in which contracts across and within identity groups used trust work. The goal is not to present the data set as representative of all contracts, but to consider frequencies of occurrence within the set and across the timeframe, to provide context for the significance of the language being discussed, and to reveal patterns of meaning that would not be appreciable through the qualitative reading of single or even multiple documents.

[133] Ibid., 8.

1.5: The Thesis

This thesis argues that establishing trust needed work each time that it was required. Using the framework of trust work, it will investigate the ways in which the relationships facilitated and formed by notaries between merchants and investors were interpersonal and collaborative in nature and how this is reflected in the ways the documents were written.

Notarial contracts represented a particular moment in the relationship between merchants and investors, based on their pre-existing relationship and setting up hopes for the future. The contracts show that trust work was done through three key mechanisms, an original formulation presented here: risk, character, and uncertainty management. Risk-management techniques provided one or both parties with a form of guarantee, through real-world solutions to problems related to payment and nonfeasance. Character-management techniques provided one or both parties with a form of assurance that they could and should put confidence in the person of the other party. This did not normally provide a clear solution to problems though could be legally enforceable. Character management allowed parties to deal with the reputation and future intentions of people in the formation of trust. Uncertainty management provided one or both parties with a form of flexibility or control through the granting of discretion or imposition of constraints, which enabled future unknowns to be managed and often explicitly relied upon the competence and reputation of a party. The contracts used these three mechanisms to varying degrees to build the interpersonal trust relationship required in each situation.[134]

Institutional risk-management techniques provided security in relation to specific potential problems. Chapter 2 explores the role of the notary and his documents as officially-recognised legal records which lived past the lives of the parties or notaries. This meant that contracts could be used in courts in the case of default or nonfeasance and act as evidence

[134] This framework owes much to James S. Coleman, *Foundations of Social Theory,* (Harvard University Press, 1990), 182-183.

to the relationship. Chapter 3 examines a further institutional risk-management technique which provided security for merchants, thereby playing a part in institutionally facilitating merchant and investor relationships; the kings of Aragon were diplomatically active individuals who negotiated with foreign rulers for the benefit of Catalan merchants. Travelling parties placed their evidenced belief in the work done by the kings to negotiate with foreign rulers in relation to everyday problems and prevent foreign merchants capturing them. This extended to a possibility that the kings would work to redeem merchant captives and return them to their homelands.

Linguistic risk-management techniques were used in notarial documents and chosen during the negotiation of the relationship. Pledges of goods, specific collateral, monetary penalties, and guarantors explored in chapter 4, were offered in particular relationships to guarantee the investing party that their investment would be returned if there was a problem with the trading venture or with the travelling party. I will argue that in using these risk-management techniques, merchants placed their trust in institutions (e.g. debt collection services and the courts) but also shaped inter-personal trust, changing the nature of the agreed upon relationship.

Parties also engaged in trust work in the form of character management. Phrases took various forms and provided different kinds of assurances to each party. As shown in chapter 5, oaths assured the investing party that the travelling party had motivation to fulfil their obligations, providing additional levels of religious punishment through excommunication and possibly community punishment through reputational damage, should the travelling party fail in their obligations. As demonstrated in chapter 5, some parties also chose to commit to lawful behaviour, explicitly stating that they would obey the law, not commit fraud, and fulfil the obligations of the contract. These phrases provided a form of assurance in the future behaviour and character of the party. Character-management phrases in the form of promises to act and behave in a certain manner, such as to act faithfully, assured the investing parties that the travelling merchants were competent and trustworthy individuals.

Chapter 6 explores how risk and uncertainty were built into the agreements. It examines the granting of discretion and imposition of constraints as part of a spectrum of reactions to the unknowns of long-distance trade which could not be controlled. These phrases created varied power dynamics between parties; flexibility for one could mean control for the other. Some discretion phrases explicitly called upon the competence and reputation of a merchant referring to their ability and judgement, demonstrating particular confidence and high levels of trust.

Chapters 4-6 analyse the effect of social factors on trust work, exploring how contract type, gender, and family relationships affected the mechanisms being examined. Chapter 7 explores how membership of religious communities affected the trust work undertaken by parties and notarial documents. It examines the role of Muslims and Jews in the contracts and the use of all three mechanisms in inter-religious and intra-religious groups. The term 'inter-religious' is used to refer to agreements between people of different religious communities, for example between a Jewish investing merchant and a Christian travelling merchant. 'Intra-religious' refers to agreements between people of the same religious community, either both Jewish or both Christian. By testing the hypothesis that religion negatively affected trusting relationships, the religious group is consciously reified; defining individuals by one group membership such as religious is to overly simplify human identities but a necessary part of the examination.

Overall, the documents tell nearly 1432 individual stories. Each contract formed a particular relationship, in which parties chose which risk, character, and uncertainty-management mechanisms suited their needs. These decisions were made with some level of reliance on the notarial institution and the diplomatic work of the kings of Aragon which each did their own trust work. Each part of trust work was not sufficient alone to deal with the risks and unknowns of long-distance trade across the Medieval Mediterranean. Each did a degree of work, as part of a series of interlocking and mutually-constitutive processes, which allowed the merchants to engage in complex and long-term trusting relationships.

Chapter 2 – 'Public instruments' and the notary: a person of trust and his documents

2.1: Introduction

Catalan merchants went before notaries to create contracts for investments and loans related to long-distance trade. This chapter presents notaries not as passive scribes, recording documents and relationships, but rather as actively central to trust-making processes due to the collaborative nature of their work and their documents. Following North, the notarial institution is seen as the rules of the game while the individual notary and his office is a player in the game.[1] Notaries and the notarial institution carried out trust work which allowed merchants to build relationships through agreements.

The history of the notary in the *Països Catalans* is briefly outlined to place the notaries of 1240-1350 into context, before *ius commune* commentaries are used to consider the complex position notaries held as legal officials. As public figures appointed by royal officials and trained in the *ars notariae*, notaries held a complex position between public and private, predominantly working for private individuals creating private documents. Yet, notaries were also required to carry out their position openly, without concealment (or publicly). The intermediary position enabled notaries to play a central part in the negotiation and creation of trusting relationships. This is evident in both how and where notaries worked and the way in which notarial documents were varied to suit each individual situation.

[1] North, *Institutions*, 4-5.

2.2: The Catalan Notary between public and private

In western Europe, public notaries first became common in Italian towns in the twelfth century. By the thirteenth century, notarial instruments were being produced in great numbers in Italy, southern France, and Catalonia and a large number of notaries made a living producing a range of documents for individuals and institutions. [2] Notaries created everyday documents/legal acts such as marriage agreements, dowries, loans, sales, land transfers, wills and testaments, and post-mortem inventories, making them an essential part of the life of most people in Catalonia at one time or another.[3] Stuard argues that 'notaries offered perhaps the most valued civic service open to townspeople' in the period.[4] Notaries were also essential to the developing legal institutions, working in courts to record proceedings.[5] The ratio of notaries to the urban population of late thirteenth-century Genoa has been estimated at 1 to 500. Burns estimates that notaries would have been only a little less common in Catalan towns.[6] Bensch states that the number of notaries in Catalonia 'multiplied with breath-taking speed' during the reign of Jaume I (King of Aragon, Count of Barcelona 1213-1276, King of Majorca 1231-1276) and argues that by 1280 there were more than 40 public notaries active in Barcelona or, as Burns states, 1 notary to every 250 potential clients.[7] The situation in Mallorca, while more unclear, appears to have been similar. Mummey suggests that *La Ciutat*

[2] For an overview of the development of the notarial office in Catalonia see Daniel Piñol Alabart, "Public Notary in Medieval Catalonia: Some Considerations," in *Il Notaio nella società dell'Europa mediterranea (secc. XIV-XIX),* ed. Gemma T. Colesanti, Daniel Piñol, and Eleni Sakellariou, special issue, *RiMe* (Rivista dell'Istituto di Storia dell'Europa Mediterranea) 9 (2021): 11-42; See also Winer, "Jews," 117; James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*, (University of Chicago Press, 2008), 394, 399–400; Sarah Ifft Decker, "Gender, Religious Difference, and the Notarial Economy in Medieval Catalonia, 1250-1350," (PhD Diss., Yale University, 2017), 9.
[3] Comuzzi, "Economic and Demographic Change," 35.
[4] Stuard, "Legal Services," 271.
[5] Winer, "Jews," 117; Robert I. Burns, *Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250-1350* (University of California Press, 1996), 38-40.
[6] Winer, "Jews," 117; Burns, *Jews*, 39.
[7] Burns, *Jews*, 39; Stephen P. Bensch, *Barcelona and Its Rulers, 1096-1291*, (Cambridge University Press, 1995).

in the fourteenth century was full of notaries, evidenced by the scale of economic activity taking place.[8]

The notarial institution differed from previous scribal practices because notaries became 'public persons', nominated and given authority by public institutions, such as municipal authorities or the crown. Unlike the ancient Roman *tabellio*, the notary was closely tied to public authority.[9] Notaries in the Crown of Aragon were now professionalised, either studying at the school of Bologna or Lleida, or through an apprenticeship in a notarial office of at least 8 years. They were required to take an exam in front of royal officials and powerful men (*prohoms*) of the city or region.[10] Notaries were considered professional figures with scribal knowledge and called 'public notaries' given 'public faith' by an authority figure or institution.[11]

In the Crown of Aragon, the earliest notaries appeared from the twelfth century, linked to the extension of royal power; the earliest is found in Barcelona in 1129. Public notaries flourished in the thirteenth century, when, in August 1258, Jaume I established a public notariate of Barcelona, through a royal privilege allowing Christian citizens and the official Jewish inhabitants of the city to elect their own notaries.[12] At the end of the century, royal privileges to the city governed the salaries of notaries and created rules for redacting documents.[13] By the fourteenth century, the training process for new notaries was notably rigorous. There were various requirements for those wanting to take notarial office; applicants had to be at least 20-25 (depending on local laws), male, of free status, physically well, and

[8] Mummey, "Women," 18-19.
[9] Nussdorfer, *Brokers*, 11.
[10] Baiges, "Notariat Català," 135-136, 139; Maria Teresa Ferrer i Mallol, "L'instrument Notarial (Segles XI-XV)," in *Actes Del II Congrés,* eds. López Burniol and Sans i Travé, 32; Arcadi Garcia i Sanz, "Precedents, Origen, I Evolució Dels Col·legis Notarials," in *Actes Del I Congrés,* ed. Sans i Travé, 173.
[11] Baiges, "Notariat Català," 135-136.
[12] Decker, "Gender, Religious Difference," 16.
[13] Ibid., 16.

Christian (Jewish and Muslim minorities were granted rights to have their own equivalent system, see chapter 7).[14]

Nussdorfer argues that notaries came to be considered necessary because of new forms of public authority. A new appreciation of written evidence was elaborated in law faculties, creating the concept of 'public credibility' (or *fides*) of the notarial art.[15] Like the rest of southern Europe, Catalonia saw the importation of the *ius commune*. Beginning in Bologna, the academic study of law rapidly grew with a focus on the study of the *Corpus iuris civilis,* the Justinianic corpus, and the *Decretum*, a collection of excerpts compiled by Gratian (or Gratian and another man) between 1140 and 1150 from Church councils, the writings of the fathers, and other sources regarded as authoritative by Christians.[16] Together, the civil and canon law constituted the *ius commune*, ('common law'), which was considered to be applicable when local law or custom did not contradict it.[17] While modern scholars view Justinian's law texts as shaped by multiple minds responding to different needs and philosophical currents, medieval jurists saw the texts as 'a simultaneously valid whole' so that the 'meaning of each text' was found by interpreting it 'in the light of every other.'[18] Transported via trade routes with Italy, Catalonia received the impact of the *ius commune* earlier and more profoundly than other European kingdoms; its influence is detectable as early as the end of the twelfth century and was common in academic circles, legislation, and local customs by the thirteenth century.[19]

Notaries and their documents occupied a complex position between public and private. Nominated by public authorities, the king, his representatives, and municipal

[14] Baiges, "Notariat Català," 146-147.
[15] Nussdorfer, *Brokers*, 1, 7.
[16] Anders Winroth, *The Making of Gratian's Decretum* (Cambridge University Press, 2000).
[17] James Gordley, *The Jurists: A Critical History,* (Oxford University Press, 2014), 28.
[18] James Gordley, *The Philosophical Origins of Modern Contract Doctrine*, (Oxford University Press, 2011), 30; Manlio Bellomo, *The Common Legal Past of Europe, 1000-1800,* trans. Lydia G. Cochrane (Catholic University of America Press, 1995), 55-125.
[19] Marie A. Kelleher, "Law and the Maiden: Inquisitio, Fama, and the Testimony of Children in Medieval Catalonia," *Viator* 37 (2006): 360.

authorities, they also served a private function, creating documents for individuals based on a varied rate and often running a scribal office. The notary, as a public worker, was endowed with 'public trust' or 'faith' which was considered to extend to his documents, as probative writings.[20] Studies of writing have long emphasised the importance of the growth of trust in the written word. Beginning with Clanchy, a number of scholars have followed his lead in emphasising the importance of trust in and created by writing and recording.[21]

Endowed with credibility (*fides*) by public authority, Nussdorfer argues that notaries came to possess a quality of 'public trustworthiness', acting as 'brokers' of public trust; they stood between public officials and self-employed professionals.[22] Nussdorfer points out that commentaries by jurists played a key role in defining the theory and practice of the notarial institution, focusing on the writings of a few across the period 1200-1600.[23] Garcia i Sanz argues that the public position of notaries was established by the *ius commune*. He argues that the concept of 'public faith' was created by Pope Alexander III (1159-1181), who declared that documents prepared by public notaries (*manum publicam*) be considered trustworthy records of the transactions they described even after the death of the writer.[24] As Brundage argues, this meant that they were 'public instruments' with authority that did not depend on witnesses, seals, or other authenticating devices. A notary's formal declaration that he had written and authenticated them with his personal sign guaranteed their reliability.[25]

While public and private are not easily separated in reality, the terms were used to define legal statuses. Contemporary canon law codes and commentaries show that notaries were considered central figures in much discussion related to the concept of 'public' and to the authority of documents. Many of the *Decretals* of Gregory IX (1227-1241), which built on

[20] Ferrer i Mallol, "L'instrument Notarial," 29; Pagarolas i Sabaté, "Notariat i Cultura," 333.
[21] Clanchy, *Memory*, chap 9.
[22] Nussdorfer, *Brokers*, 3-4.
[23] Ibid., 9.
[24] Arcadi Garcia i Sanz, "Origen de la fe pública del document notarial," in *Actes Del II Congrés,* eds. López Burniol and Sans i Travé, 491, 493-494; Ferrer i Mallol, "L'instrument Notarial," 31-32.
[25] Brundage, *Medieval Origins*, 398.

Gratian's *Decretum* and referred directly to the *Decretals* of Alexander III (1159-1181), discussed documentary authority and referred to notaries as men who wrote public and authoritative documents.[26] Late medieval legal commentators examined these terms and discussed how the *Decretals* should be understood by jurists at the time of the contracts in the set (broadly 1200-1400). Most of their answers took the form of circular definitions where public was defined as related to a 'public person or object' and authority was related to the public nature of the person or object. However, they also provided information about the role of the notary and the important features of a document which made it 'trustworthy'.

Though notaries outside of courts were predominantly serving the private needs of individuals, decretalists defined all notaries as public servants normally with a 'public office'. Francesco Zabarella (born in Padua 1360, studied at Bologna) called the notary 'a public person, because he has a public office' ('dicitur persona publica: quia habet officium publicum').[27] Similarly, Johannes de Imola (born 1372, studied at Bologna) frequently wrote that notaries were public servants, because they held an official office.[28] He also commented that writing by 'public hand' was writing by the 'hand of a notary' who was said to be 'a public person' ('per manum publicam hoc est per manum tabellionis que dicet esse persona publica').[29] Likewise, documents were understood as 'public' when they were 'made by public hand' or 'by the hand of notary'.[30]

The decretalists described the notary as a public person and also used the role of a notary to define the term public itself. The fullest description of the role of the medieval notary was provided by Egidius de Bellemera (died 1407, taught law in Italy and Avignon).[31] He

[26] Garcia i Sanz, "Origen de La Fe," 493-493; Ferrer i Mallol, "L'instrument Notarial," 31-32.
[27] Francesco Zabarella, *Lectura d[omi]ni Cardinalis Zabarella Super secu[n]do decretalium adamussim tersa [et] emuncta. [et] in multis locis in q[ui]bus erat laniata nunc artificiose resarta*, ed. Jean Thierry, (Impressa quide[m] Lugduni, 1517), 39r; 'Franciscus Zabarella', *Legal History Sources*, accessed 11 September 2024, http://legalhistorysources.com/1298a-z.htm.
[28] Johannes de Imola, *Ioannes de Imola Super prima parte primi [-secu[n]di] libri Decretalium, Per Bernardinum Stagninum de Tridino de Monteferato,* (Impressione[m] habuit Venetijs, 1500), 68r.
[29] Imola, *Ioannes de Imola,* 100v; 'Johannes de Imola', *Legal History Sources*.
[30] Imola, *Ioannes de Imola*, 101r.
[31] "Egidius de Bellemera," *Legal History Sources*.

stressed that the notary responded to the needs of the public and created writings in public form with a perpetual nature:

> 'notarius alias publica persona est et publicum habet officium quod in scribendo et scripturam et gesta hominum in notam recipiendo, notam quae in publicam formam ad aeternam memoriam redigendo consistit.'[32]
>
> [A notary is a public person and holds a public office, which involves writing and noting the deeds and actions of people, which by being put into public form, is preserved for eternal memory.]

For Bellemera, the role of the notary was public facing, serving the community and creating a form of communal memory. The concurrent use of the notary as a way to define 'public', created a circular definition of the terms; Bellemera defined the word public, as simply 'a notary' because 'he performs a [public] office and from this is called a public servant' ('publicum, id est tabellionem: publicum enim gerit officium, et ex eo seruus publicus dicitur.')[33] Zabarella, too, when commenting on the word public, provided the definition and responsibilities of the notary as the answer. The two concepts were tightly bound together; public was defined as the notary, a public servant, performing a public office given to him by a prince or from another person with the authority of a public officer.[34] The term 'public' was one and the same as the notary. The circular reasoning suggests that the two terms developed together and were considered inseparable.

Methods of securing documents from a notary were a concern for commentators, who emphasised the notary's public nature (here also meaning open and unconcealed) as central to the trust placed in the state-sponsored organisation. Nicolò de Tudeschis, known as Panormitanus, (born in Catania 1386, studied canon law in Bologna and Padua under Zabarella,

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[32] Gilles de Bellemère, *Aegidii Bellemerae, iuris pontificii doctoris multo celeberrimi, audientiarum olim palatii primu[m], ac deinceps contradictaru[m] auditoris lo[n]gè facundissimi, In primam primi [-tertia[m] secundi] Decre,* (Lugduni, 1548), 83r.
[33] Bellemère, *Aegidii Bellemerae*, 81r.
[34] Zabarella, *Lectura*, 39r.

Archbishop of Palermo 1432) questioned how one ought to request the work of the notary.[35] He answered that it should be not in secret but in public, since his office is public ('quod non in secreto sed in publico cum officium suum sit publicus').[36] Bellemera too questioned whether a request to a notary had to be made in public, or if a private request would be sufficient. He came to the same conclusion, writing that requests 'should not be made in secret', due to the public and 'commune' nature of the office, ('cum officium notarii sit publicum, et commune quando rogantur non debet in secreto manere').[37] Bellemera also noted that requests to a notary in secret would be suspicious.[38]The way these conclusions reflected the real-world actions of merchants in their requests to notaries cannot be fully known. It may relate to the physical spatial position of the notary or the need for witnesses to the request, either in an office with others, including scribes, or on the street with passers-by. The concerns highlight the centrality of the public position of the notary (public here meaning both official and visible) to the trust placed in the person and his writings.

The public importance of the notary was also tied up with the authority he gave to his documents. Also defined as 'scrinearius' or 'keeper of the writing office' by Zabarella, the notary was commonly referenced in relation to the writing of and authority given to documents.[39] As with the position of the notary, the authority of notarial documents was presented in a circular argument; notarial writings and public authority defined each other. Imola, Zabarella, Panormitanus, and Bellemera all define the term public in relation to documents as 'made by public hand' or having an authentic seal.[40] There was general agreement that documents had authority as a result of the authority of the notary

[35] "Nicolaus de Tudeschis," *Legal History Sources*.
[36] Nicolaus de Tudeschis (Panormitanus), *S[e]cun]da Panormi[tani] in S[e]c[un]d[u]m Decreta[lium] Secunda pars comme[n]tarioru[m]: seu lecture: domini Nicolai de Tudeschis,* (Lugdini, 1527), 146v.
[37] Bellemère, *Aegidii Bellemerae*, 156v.
[38] Ibid.
[39] Zabarella, *Lectura*, 39r.
[40] Panormitanus, *S[e]cun]da Panormi[tani],* 146v; Bellemère, *Aegidii Bellemerae*, 165r, 157v; Imola, *Ioannes de Imola,* 101v, 105r; Zabarella, *Lectura*, 53r.

('instrumentum habet auctoritatem ab auctoritate tabellionis') and that notarial acts should be trusted or believed ('actis scriptis per tabellionem credatur').[41]

There was less agreement about whether witnesses were required in public documents. Imola considered witnesses as necessary for both documents made by public hand and those with an authentic seal to seem credible ('videtur credi').[42] Panormitanus agreed, stating that witnesses must sign in a public instrument ('in instrumento publico testes debent se subscribere').[43] Imola noted that the witnesses did not have to sign themselves, but that it was sufficient for the notary to write their names ('sufficit quod notarius eos inscribat').[44] Zabarella stated that public writing was made by public hand, but did not require the signature of witnesses: 'publicum instrumentum non requiritur subscriptio testium' ('a public document, where the subscription of witnesses is not required').[45] At the centre of these glosses was the definition of public writing as related to a public person, position, office, or a notarial document. The definition also worked in reverse: writings were private not public if they were not written by a notary. Imola argued, for example, that the writings of a judge were private writings, even with signed witnesses, because writing documents was not the job of the judge, but of the notary ('cum scribere non sit officium iudicis sed tabellionis').[46]

However, some suggested that there was more to a document being considered public than being written by a notary. The *Artes notarii* textual traditions remind us that the 'diplomatic' of the document (its physical appearance, phrases, forms of address and so on) were important to the creation of trust in writing. The commentators were not specific about these forms but noted that not all writing by a notary was to be considered public; Imola noted that 'it is not enough for an instrument to be written in the hand of a notary unless it is written

[41] Imola, *Ioannes de Imola*, 91r, 109r.
[42] Ibid., 101v.
[43] Panormitanus, *S[e]cun]da Panormi[tani],* 161v.
[44] Imola, *Ioannes de Imola*, 101v.
[45] Zabarella, *Lectura*, 53r-53v.
[46] Imola, *Ioannes de Imola*, 101r.

in public form ('non sufficit instrumentum esse scriptum manu tabellionis, nisi sit scriptum in forma publica').[47] This shows that the 'public form' meant something more, although the form was not clearly defined. One suggested addition by Panormitanus was that the notary needed to sign it; if the notary did not sign the writing, it was private writing.[48] Imola was similarly clear that the notary needed to sign his documents. For him, it made the documents trustworthy in settings beyond the specific moment of creation; the sign of the notary (each had his own pictogram) was what provided public authority, even if there were no signed witnesses.[49] However, Zabarella challenges this, writing that even if, when it was asked for, such writing did not have the signature of the notary, if it appeared made by the public hand, it was sufficient ('si tamen apparet manu publica facta sufficit').[50] For Zabarella, the writing of the notary was enough. The continued confidence in the notary's writings was directly affected by these discussions, as his public writings continued to be considered reliable past the moment of creation and past the life of the notary.

Public documents also had to be preserved by notaries. Arlinghaus suggests that the entrusting of texts to independent social institutions, such as scribal offices, for safekeeping was important for enabling the document to become 'an almost independent product'.[51] The notarial register was considered the original while individual documents were copies. Imola, Bellemera, and Petrus de Ancharano (born in Tuscany c.1333, studied law at Perugia and Bologna alongside Zabarella)[52] stated that while copies of documents should be given to parties, the originals must remain with the notary.[53] The retention of documents in registers appears to be part of the process of ensuring the validity of documents. Both Imola and

[47] Ibid., 101v.
[48] Panormitanus, *S[e]cun]da Panormi[tani],* 144v.
[49] Imola, *Ioannes de Imola*, 91r.
[50] Zabarella, *Lectura*, 53r.
[51] Arlinghaus, "Point of Reference," 284.
[52] "Petrus de Ancharano," *Legal History Sources*.
[53] Imola, *Ioannes de Imola*, 68r; Petrus de Ancharano, *In quinque Decretalium libros facindissima commentaria, a plerisque erratis liberata. Cum suis summarijs, scholijs [&c.] nouiter additis, in liucem prodita,* (Bonon, 1581), 215; Bellemera, *Aegidii Bellemerae*, 81v.

Zabarella stated that where there was doubt about the faith of a document, recourse must be made to the original (the register/protocol).[54] Imola further clarified that the protocol was to be trusted above all else; in the case of variability between an extended document or shortened notes and the protocol, the protocol topped everything.[55]

Some contracts in the set evidence this theory carried out in practice. On 2 May 1320 a copy was made of a document written on 25 August 1305 and notes were made by two notaries who copied it.[56] In the presence of three named witnesses, Raimundus Dorchau, vicar of Barcelona and Vallesii and notary, 'faithfully took [a] translation from his original' ('huic translato sumpto fideliter ab originali suo'), which was not cancelled or flawed in any part. This was done on behalf of the king and by the authority of his office. He notes that the copy was to be considered the original, as far as necessary, with full faith; the new copy written by the notary had full faith like the 'original' register from which it was copied.

The commentators made clear the main benefit of production of a public document: its perpetual nature. As noted in chapter 1, the process of document creation saw notaries write the agreement multiple times. Imola concluded that the protocol itself made faith; even if a different notary wrote and signed the extended document (copy of the text) it would still possess faith.[57] This meant, Imola argued, that notaries with power to create public documents could continue the registers of another notary.[58] Similarly, Panormitanus and Bellemera stated that an instrument in public form had a perpetual nature and had to be followed even if the witnesses or notary died, as long as there was no suspicion of the document.[59] Bellemera placed the perpetual nature of the documents into clear terms: the public person created authentic and public documents 'for the eternal memory of the matter'

[54] Imola, *Ioannes de Imola*, 68v; Zabarella, *Lectura*, 39r.
[55] Imola, *Ioannes de Imola*, 68v.
[56] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* doc. 74.
[57] Imola, *Ioannes de Imola*, 114r.
[58] Ibid., 114v.
[59] Panormitanus, *S[e]cun]da Panormi[tani],* 145v, 147r; Bellemère, *Aegidii Bellemerae*, 157v.

('ad aeternam rei memoriam faciendam').[60] Given the long duration of much water-based trade by Catalan merchants, the perpetual nature of notarial documents ensured that the agreements would be valid after the lifetime of the notary and witnesses.

Indeed, Catalan laws ensured that notarial contracts survived past the life of the notary and remained accessible. Baiges argues that the normal rule was for material to remain in the hands of other notaries, preferably a family member who had become a notary. If a notary had not made arrangements before death, the local authority passed the registers to another notary.[61] By 1300, Catalan legal codes required notaries to pass their writings to other notaries if they left the locality or after death. The *Costums* of Tortosa, written in 1272 and promulgated in 1279, established that in the case of death or absence of a notary the registers were to remain in the city in the hands of another notary. The *Ordinacions* of Lleida pronounced the same in 1289.[62] The registers occupied an interesting position: part private, family possessions, and part public records of public transactions. Szende argues that the place of storage of documents affected their status as trustworthy objects and facilitated everyday relationships.[63] The need for the documents to continue to be locatable, accessible, and copiable highlights their continued importance as witnesses of transactions, trusted texts, and facilitators of trusting relationships.

Such thinking was reflected in the realities of practice; the transfer of work between notaries was noted within contracts. Bernardus Arnaldi appears to have taken over the notarial office of Francischus de Caselles. In a note made on the manuscript, directly following the sign of Arnaldi on an agreement originally written on 6 October 1344, he recorded that he found the contract in a summary of the requests or notes written by Caselles.[64] The original

[60] Bellemère, *Aegidii Bellemerae*, 135v.
[61] Baiges, "Notariat Català," 158.
[62] Ibid., 157.
[63] Szenda, *Trust, Authority,* chap. 5.
[64] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* doc. 94. Barnardus Arnaldi records that he found the document in 'a capbreu or a register of requests or notes of Francischus de Caselles'

document was a record of a repayment of a debt by Petrus de Mitjavila to Jacobus de Mitjavila for £99 7s. 11d. Arnaldi then copied the note form of the document into his register on 30 August 1346, noting that he was left the legacy of the writings of Caselles ('ex legato per dictum Francischum de Casellis eidem Bernardo relicto de scripturis suis') by the authority of the vicar of Barcelona, who conferred power on Arnaldi, presumably appointing him as a notary ('ex auctoritate vicarii Barchinone, qui de hoc dicto Bernardo Arnaldi contulit potestatem'). The note demonstrates how the work of a notary might be passed onto another at retirement or death. It also shows that documents might not have been written into the main register for a significant amount of time after they were originally drafted, here taking 694 days, presumably as a new notary had to catch up on work left by the previous incumbent. It moreover shows that while the vicar had authority to appoint notaries, they continued to work on documents for private citizens and their mercantile needs.

Beyond the notarial hand, documents needed to be read aloud to be considered public. Panormitanus stated that public writing was by a notary and read before the parties ('scriptura confecta per notarium sit coram partibus lecta').[65] He later asked whether the notary's protocol or register created faith ('faciat fidem') if it was not read aloud publicly to the parties. He answered that the public status of the notarial document in such cases was questionable.[66] He concluded that it was very clear ('clarissimum') that 'whatever is written is not valid unless it is first written completely and later read before the parties and witnesses' ('non valet quicquid scribitur nisi prius complete scribatur et postea legitur coram partibus et testibus'.)[67] This requirement was not clearly stated in the other commentaries but reflects known practice in Genoa at this time.[68]

('quodam capibrevio sive protocollo rogacionum sive notularum Francischi de Casellis') suggesting that the full and unabbreviated copy of the contract was not recorded fully into a register.

[65] Panormitanus, *S[e]cun]da Panormi[tani],* 144v.

[66] Ibid., 170v.

[67] Ibid., 170v.

[68] Steven A. Epstein, "Secrecy and Genoese commercial practices," *Journal of Medieval History* 20, no. 4 (1994).

While the status of a public document was defined by contrasting it with private documents, the weak boundaries show that the concepts were fragile. Private writing was often defined in more detail than public writing, using fewer circular definitions. Imola frequently made a contrast between the two types of writing. He stated that 'a private document is not trusted like a public one ('Privato instrumento non creditur publico').[69] Imola and Bellemera both provided lengthy descriptions of private writing, stating that it was any writing not drawn up by a notary or a judicial act, as faith was not given to them by law, unless they were approved by the confession of their adversary, by witnesses, or by comparison with texts.[70]This provides significant latitude; the lack of a notary was not fatal to a document being considered public or at least trustworthy. Zabarella, too, saw private writing as lacking reliability ('non facit fidem'), arguing that private writings should be seen as distinct from public writing, unless they were helped by witnesses.[71] It was not that private writings could not be trusted, but that they needed additional bolsters, or proofs, such as witnesses. However, Panormitanus expressed a more negative view; 'a private document [was] not trusted' ('priuato instrumento non creditur') and, when signed and approved by witnesses, was not known as public, though could be called publicly written ('si scriptura priuata et testibus subscripta et approbats non dicitur publica: licet posset dici publice conscripta'). [72] For Panormitanus, witnesses and even a category of 'public writing' were not substitutes for the work of a notary. Almost all the definitions of private writing noted that it lacked 'fides' or 'firmitatem', even though these words were not normally seen in definitions of public or notary.

Consideration of the use of witnesses, comparison, and reading aloud, echoes the concept of 'fractional' proofs: things which were not proof in themselves but which in concert added up to full proof. 'Fractional proofs' were used in legal discussions of standards of proof, departing from the rules laid out in the *ius commune*, though were not unanimously

[69] Imola, *Ioannes de Imola*, 90v, 101v.
[70] Ibid., 101r; Bellemère, *Aegidii Bellemerae*, 156r.
[71] Zabarella, *Lectura*, 53r.
[72] Panormitanus, *S[e]cun]da Panormi[tani]*, 144r, 146v.

accepted.[73] Similarly, no writing was seen as probative by itself but required additions which created trust, either the hand and mark of a notary, creating full proof, or witnesses and comparison which some believed could create full proof without the notary. This was debated by the commentators. The Italian jurist Baldus de Ubaldis (1327-1400) considered that a public instrument had the weight of two witnesses while a full proof required three.[74] In a fractional proof way of thinking, the position of the notary appears to be diminished, as he could, according to some decretalists, be replaced by witnesses and other forms of proof.[75] This makes the choice to use a notary for the creation of contracts more important, as it was not necessary in order to create a binding public document. It may have been that a notarised contract was simply the easiest to enforce, rather than the only option. Zabarella explained why one might choose private writing; sometimes it is expedient that something be written down but the public form is not useful or convenient.[76] The use of a notary represented a particular choice to create the most solid form of public document.

The theoretical differences between writing defined in three ways, as private, public, and authentic, helps us to understand why someone would choose to use a notary. Authentic writings were considered different and yet related to both public and private writings, sitting somewhere in between them in terms of their credibility. Imola considered that public writing was by public hand in public form or with an authentic seal, 'like authentic writing' ('sicut scriptura aucthentica'), which was written by private hand, without a seal, but with witnesses which could prove it.[77] Imola later clarified that 'private writing with signed witnesses [could] be called authentic' ('scriptura priuata habens scriptionem testum, possit dici auctentica').[78] Zabarella, however, stated that authentic writing was by public hand, with two or three

[73] Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7, no. 1 (1989): 28, 36, 43, 56-57; Nussdorfer, *Brokers*, 14.
[74] Nussdorfer, *Brokers,* 15.
[75] Ibid., 16 explores this with a focus on the Early Modern period.
[76] Zabarella, *Lectura*, 49r.
[77] Imola, *Ioannes de Imola*, 101v.
[78] Ibid., 102r.

witnesses, making it the same as public writing, if not stronger, as it always had witnesses.[79] For Zabarella, writing was not considered authentic or public without witnesses ('non censeri instrumentum authenticum seu publicum sine testibus').[80] Bellemere sat somewhere in the middle, agreeing with Zabarella that witnesses were required for authentic writing by public hand, while stating that 'some even say that authentic writing is that which is made privately with the subscript of the witnesses' ('quosdam etiam dicere authenticam, scripturam esse quam facit priuatas cum subscriptine testium').[81] The separation of the opinion from his own, using 'some even say', suggests that he did not agree with this view himself. Panomitanus was one such commentator who considered that witnesses made private writing 'authentic'.[82]

As such, public, private, and authentic were very difficult to separate. Martinus Martini (writing c.1300 in the Iberian Peninsula, died 1305) had a rather confused and generic definition for authentic writing. Perhaps the most relevant decretalist for the late medieval *Països Catalans*, Martini presented various paths by which writing could become authentic: 'written by means of the public hand or by the judge or by the signatures of two or three witnesses, or by testimony, or by two persons in the place of the notary, or with an authentic seal'. For Martini, writing made by a private person in the presence of witnesses was also authentic.[83] Authentic seemed to be the most common form of writing and yet was a particularly slippery term to define and does not appear in any of the documents in the set. Most commentators included a phrase stating that while all public writing can be said to be authentic, not all authentic writing is public.[84]

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[79] Zabarella, *Lectura*, 53r; Bellemère, *Aegidii Bellemerae*, 155v.
[80] Zabarella, *Lectura*, 53r.
[81] Bellemère, *Aegidii Bellemerae*, 156r.
[82] Panormitanus, *S[e]cun]da Panormi[tani],* 143v.
[83] "Martinus Martini," *Legal History Sources*; Martinus Martini, *Candelabrum iuris, Reportationem super Decretaliun* [Manuscrito], MSS/11970, Biblioteca Nacional de España, 87r.
[84] Imola, *Ioannes de Imola*, 101v; Panormitanus, *S[e]cun]da Panormi[tani],* 147r, 143v; Zabarella, *Lectura*, 53r.

While canon law precedents were discussed in detail, there were frequent references to the way that customary law could change the status of writing.[85] Zabarella wrote that 'when the custom ceases, every writing is said to be private except the writing of notaries and judicial acts, but let it be authenticated by custom' ('quod cessante consuetudine omnis scriptura dicitur priuata preter scripturam notariorum et actorum iudicialium, sed per conseutudinem prouata sit autentica').[86] The central definitions of the trustworthiness of documents could be changed by custom though the works of the notary maintained an authentic status and preserved trust.

The perpetual trustworthiness of authentic and public documents was normally referred to by commentators with the word 'fides', though they rarely define the term. Zabarella and Imola wrote that authentic writing made ('facit') or employed/used ('adhibetur') *fidem*.[87] Panormitanus argued that authentic writing made its own faith so that 'it did not require another support to prove its validity' ('ad sui validitatem non requirit alius adminiculum').[88] Similarly, Zabarella stated that not all authentic writing made faith ('facit fidem') while public writing made faith even if the witnesses died if written by a notary.[89] This suggests that private writings which were treated as public because they were witnessed reverted to being private once the witnesses died, providing a solid case for why one might specifically seek to use the skills of a notary, providing undying witness to documentation due to their public authority.

The commentators stressed that public and authentic writings were legally enforceable without any other legal support. This is particularly pertinent when focusing on the documents of traders in the *Paisos Catalans.* Bellemera, Panormitanus, Martini, and Imola made this feature of public and authentic writings clear. Martini wrote that 'every writing is

[85] Bellemère, *Aegidii Bellemerae*, 157v, 163v.
[86] Zabarella, *Lectura*, 53r.
[87] Zabarella, *Lectura*, 53r; Imola, *Ioannes de Imola*, 100v, 101v.
[88] Panormitanus, *S[e]cun]da Panormi[tani],* 143v.
[89] Zabarella, *Lectura*, 53r.

public which is believed without any other aid of law or custom' ('omnis scriptura est publica cui creditur sine alio aminiculo de iure vel consuetudine').[90] Payment for the public writings of a notary was a way in which merchants could secure that agreements would be legally enforceable and therefore more reliable.

The conceptual differences between private, public, and authentic writing demonstrates why merchants chose to employ a notary and identifies some of the essential trust work which was done by their documents. Notaries were considered to be public figures, able to produce trusted documents whose probative value would outlive the lives of the notary, witnesses, and parties. While Nussdorfer argues that the concept of the notary as a 'public person' was a 'legal fiction', the role and authority of the notary was central to how relationships were built.[91] This was not a fiction but a real and important part of the functioning of trade contracts, as demonstrated by practice.

When mentioned within contracts, notaries and their writings were frequently labelled as public and their authority was recognised. The office was used to provide authority in the new agreement by referencing previous agreements or the notary's authority. 107 of the agreements in the set included a reference to a notary, either the one writing the contract or the author of a previous agreement. 33 of these specifically labelled the notary as a public person ('notarius infrascripto tanquam publice persone').[92] 22 agreements referred to the 'authority' of the notary, either alongside the label 'public' or alone. For example, contracts labelled public instruments as created by the authority of a particular public notary, such as 'the public instrument written under the authority of Jacobus de Colle, public notary of Barcelona' ('instrumentum publicum inde factum aucctoritate Jacobi de Colle notarius publici barchinone').[93]

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[90] Bellemère, *Aegidii Bellemerae*, 156r; Panormitanus, S*[e]cun]da Panormi[tani],* 143v; Imola, *Ioannes de Imola*, 101r; Martini, *Candelabrum iuris*, 87r.
[91] Nussdorfer, *Brokers*, 12.
[92] ACM, PRT-14545, 9v1.
[93] AHPB, Jaume Ferrer 19/3, 91v-92v.

Parties made references to a notary in the contracts to use their position as a trustworthy witness and document creator. 12 agreements included a form of promise to the notary to fulfil the contract. On 10 March 1336, for example, Poncius de Boladeres and William de Perereda formed a partnership for three years, to trade in whatever parts and places they deemed fit. The agreement was written by Llorenç de Canals. The men ended the long document with a promise to each other and the notary writing the agreement, on behalf of both parties and any interested persons ('promittimus […] notario infrascripto tanquam publice persone pro utraque parte et pro omnibus etiam personis quarum interest') that they would carry out the agreement.[94] The notary, Llorenc de Canals, was acting as a form of confirming party to the agreement, witnessing and guaranteeing the agreement on behalf of the parties and of all those who might be interested, reflecting the public position that the notary held. Similarly, a notary could act as proxy for an absent party. In two agreements in 1334 and 1340, the notary writing the contract acted on behalf of one of the parties; on 6 October 1334, the notary Petrus de Cava Roches represented Bemardo de Burdillis and on 8 March 1340 Franciscus Simonis represented Petrus de Mitjavila as they were both absent for the writing of the contract.[95]

Contracts also referred to past notarial instruments as proofs of previous agreements. 82 agreements referred to another public instrument in some way. On 24 July 1314, Salvator Felicerii acted as a proxy for Raimundi de Arteriis, referring to a previous public instrument in order to show that he was a legal proxy: 'ad infrascripta procurator sum cum publico instrumento facto per notarius infrascriptum pridie kalendas Junii anno subscripta' ('I am the agent of the undersigned with a public instrument signed by the undersigned notary on the day before the kalends of June').[96] Payments previously made could also be proved with reference to a past notarial document. Multiple contracts refer to the creation of a partnership

[94] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 32.
[95] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* doc. 87.
[96] AHPB, Pere de Torre 6/1, 87v3-88r.

between Paschalis de Englada, Jacobus Canyeles, and Periconus Cenderii. When Englada received £2100 from Canyeles and Cenderii for trade in Sicily and elsewhere, the contract noted that the partnership had been created in a previous notarial instrument by the same notary: 'prout de hiis constat quodam instrumento inde facto in posse notarius Infrascripti' ('as it is evident from a certain instrument made through the authority of the undersigned notary').[97] The notarial documents acted as witnesses to previous agreements, using their public nature as proof. The contracts demonstrate that the public position of the notary and his documents was considered important and was placed in positions of trust.

[97] ACM, PRT-14540, 114r1-114v.

2.3: The notary's documents as active, performative, and collaborative agreements

Not only did notarial documents play a role as probative agreements imbued with trust, but the process of document writing and the work of the notary was itself a part of the trust-making process. Basing their opinions on the correct practice espoused by commentators and jurists, scholars believe that, when creating a document, notaries would draft the contract in discussion with the parties, and then read it aloud before the parties to ensure that both were aware of and agreed to the contents before they signed it.[98] Nobutada argues that the validity of the written word was not assured unless read aloud in the presence of multiple people.[99] Many contracts began with the phrases 'let everyone know' ('noverint universi') and 'in the name of God let it be clear to all that' ('in dei nomine sit omnibus manifestum quod') which provides a suggestion of reading aloud.[100]

The performative moment of reading a contract aloud has various implications. Firstly, the drafting and then reading aloud of the contract highlights that the creation was a collaboration between the parties and the notary. The notary would gather information from the parties to draft the initial contract, but the reading aloud provided a moment for feedback and adjustment. It is common to see corrections in contracts. While we cannot be certain when corrections or additions happened, the reading back of contacts provided the perfect opportunity. In a contract written by the notary Lluch Pons on 17 May 1325 additions and

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[98] Baiges, "Notariat Català," 136-137; Ramon Josep Puchades Bataller, '"El Notari Valencià Baixmedieval: Exemple de La Posición I Percepció Social de La Professió Notarial En l'occident Mediterrani Del Segles XIII, XIV I XV," in *Actes Del II Congrés*, eds. López Burniol and Sans i Travé, 521; Reyerson Kathryn, "Rituals in Medieval Business," in *Medieval and Early Modern Ritual: Formalized Behavior in Europe, China and Japan*, ed. J. Rollo-Koster (Brill, 2002), 95.

[99] Nobutada Zushi, "Negotiations and the Use of Documents in 13th Century Toulouse," in *Political Order and Forms of Communication in Medieval and Early Modern Europe*, ed. Yoshihisa Hattori (Rome: Viella, 2014), 215.

[100] Zushi, "Negotiations and the Use of Documents," 214-215; e.g. Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* docs. 90, 93; AHPB, Jaume Ferrer 19/3, bossa; AHPB, Jaume Ferrer 19/8, 85bis; AHPB, Llorenç de Canals 12/1, 56v1-57r, 70r1-70v; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 15; AHPB, Pere de Torre 6/1, 96v2-97r.

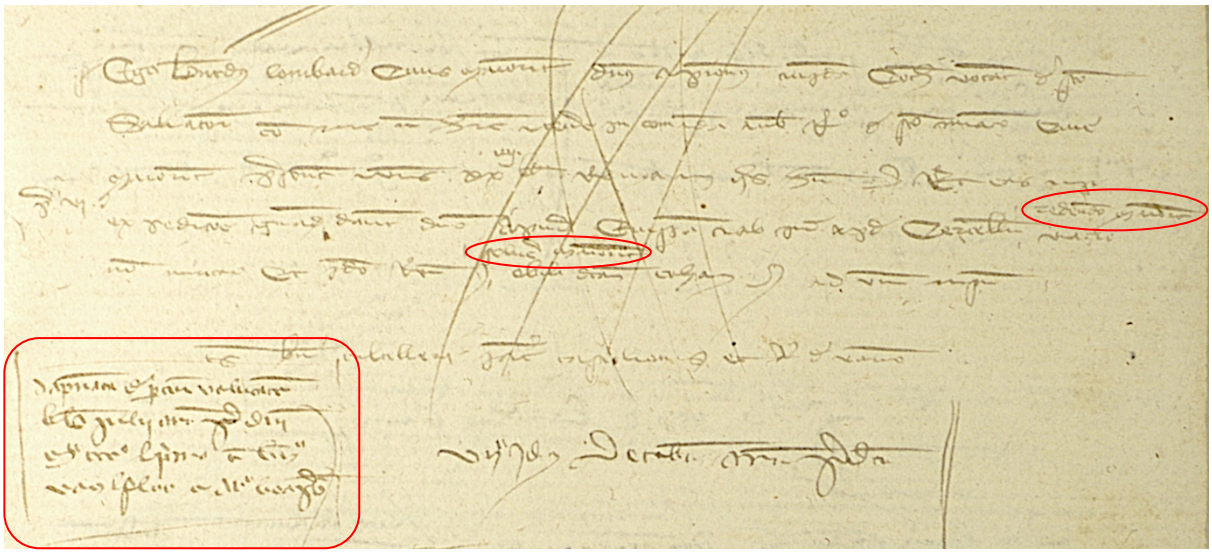


Figure 2.1: ACM, PRT-14554, 56r.

changes were made at various points (Figure 2.1).[101] Text was added stating that the travelling party was to return to Mallorca ('redeundo maioricem') and that repayment was to occur there ('soluere maioricem'). These appear to have been added at the time the contract was written as they match the hand and ink. In contrast, the cancellation clause in the bottom left, stating that the contract was cancelled by the will of the parties ('dampnum de partium voluntatem'), was added later and dated (1351). The additions may have been made either after the contract was read aloud or beforehand during discussion between the notary and the parties as they collaborated to build a suitable relationship.

Similarly, on 2 June 1316, Pere de Torre adjusted the contract he was writing as the requirements of the parties changed.[102] Bonjuha Bonavia and Issach Bonavia received an investment from Jacobo de Forebus of £30. The parties appear to have originally decided that they would trade in unspecified places, through land and sea as they saw fit. However, they were indecisive about specifying the locations of trade, originally adding they would trade 'in Narbonne, the whole of Provence, and the parts of Catalonia ('ad partes Narbone et per totam provinciam usque ad partes Cachaloni' [sic]) though most of this phrase was then crossed out. Instead, they added afterwards the locations 'Narbonne and the whole of Provence' ('usque

[101] ACM, PRT-14554, 56r.
[102] AHPB, Pere de Torre 6/2, 102r1.

ad partes Narbone et per totam Provinciam') (Figure 2.2). The end result specified regions in which the investment was to be used, with a strong sign of indecision and debate, as the phrase was added, crossed out, and then added again. The addition of information about the father of the travelling parties, labelling them as the sons of Abraham Bonavia ('filii Abraham Bonavia') also suggests that the parties asked the notary to add it in while the text was written as a part of the discussion or after it was read aloud.

These bespoke and collaborative documents were created in a performative way, discussed and read aloud in public spaces. Notaries often set up a shop in or near a civic centre, close to the courts and municipal offices.[103] In Marseille, some notaries worked in the street in front of their homes and invited passers-by to witness contracts.[104] Epstein's study of Genoese notarial registers shows that a public setting for contract creation was common. Genoese notaries were required to state the time and place of the creation of the act, allowing Epstein to examine where contracts were drafted. He finds that public places were the most common settings, such as the cathedral steps or outside the parish church.[105]

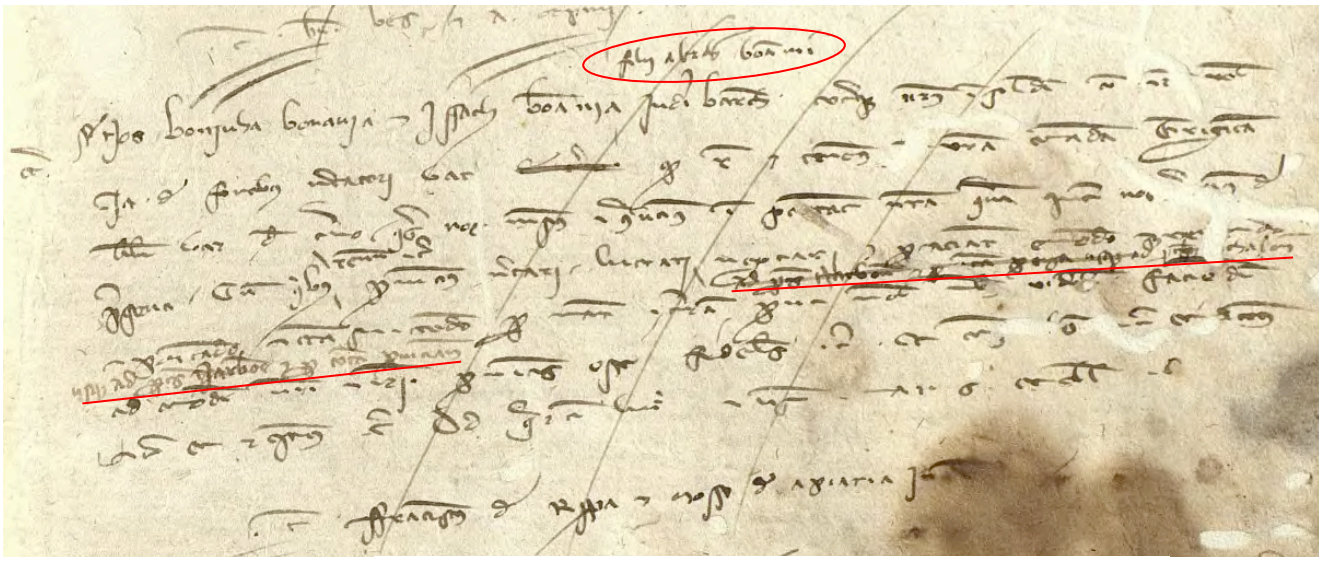


Figure 2.2: AHPB, Pere de Torre 6/2, 102r1.

[103] Brundage, *The Medieval Origins*, 405.
[104] Smail, *The Consumption of Justice,* 224-225.
[105] Epstein, "Secrecy," 319-320.

It is likely that a similar situation existed in the *Països Catalans*, although Catalan notaries were not required to note the time and place of the drafting of contracts. Notaries would have had an office or a room in the house, *scribania* or *botigia,* which acted as the office for producing and storing registers and a classroom for training new notaries.[106] Reyerson and Salata suggest that notaries would have worked on street corners or marketplaces, as well as in their own offices or *ateliers*.[107] Pagarolas i Sabaté describes portable desks, called *taulells* or *pegola*, which would be placed on streets and squares where mercantile traffic was busiest and contractual work was needed. She suggests that a common setting in Barcelona was the *Plaça Sant Jaume*.[108] This was the centre of the city, where the Roman forum had stood at the centre of the Roman city Barcino and somewhat distant from the coastline. It seems likely that notaries would also have worked in the merchant area of the city and nucleus of commerce from the early thirteenth century, known as *La Ribera* (the shore) which was the seat of the *Consolat de Mar* (consulate of the sea) and artisanal centre of the city. In Mallorca the situation was likely similar. Mummey notes that notaries recorded their activity in the docks, other public spaces in the city, as well as private homes, both in the Christian community and in the Jewish *Call*.[109] However, no contract in the set specifies the place of creation as anything more specific than 'in the city of Mallorca'.

The use of public spaces for the drafting of contracts has large implications for the trust work done by notaries and their documents. Epstein argues that Genoese business was conducted in public settings because it relied on reputation building and keeping. While self-interest benefits from short-term confidential business practices, secrecy in the marketplace could make one's reputation ambiguous. Instead, a merchant's reputation and commercial skill was 'public knowledge' as investors openly choose to place their wealth with one merchant over another or picked one port instead of another. He argues that there was a 'level

[106] Pagarolas i Sabaté, "Notariat i Cultura," 338.
[107] Reyerson, and Salata, *Medieval Notaries,* 12.
[108] Pagarolas i Sabaté, "Notariat i Cultura," 338.
[109] Mummey, "Women," 19.

of openness about commerce', not due to the nature of notarial practice but as a result of the needs of the merchant class for conducting business.[110]

Yet notaries and their business practices were central and cannot be removed from the public performance. The setting of much notarial work in squares and streets meant that the contract writing required the passing of information to the notary in public as well as the reading aloud of the finished agreement in front of the parties and witnesses. Indeed, a notary operating in a square such as the *Plaça Sant Jaume* might have sought witnesses from passers-by, bringing strangers into the trust-making process. Believing that business negotiations benefited from confidentiality, Epstein suggests that by the time the parties went before a notary to create a contract, the deal has already been agreed. This made privacy obsolete and public rereading of the contract could dispel any concerns of reputation-damaging secrecy.[111] However, this ignores the importance of contract creation as a moment of collaboration between the parties and notary. Corrections to documents show that contracts were not entirely decided beforehand but were publicly negotiated and that trust work was commonly performed in open spaces. The possible public settings of the notarial office full of scribes and people waiting to draft contracts or the busy street with passers-by heightened the trust-making performance and the position of the notary as collaborator in the creation of a trusting relationship.

Notarial acts were also active, revisited at various points over time by the notary, parties, and further witnesses. Many contracts in the set were crossed out in some way. There are various possible reasons contracts might be crossed out.[112] It may suggest that the act had been cancelled, though normally a written statement of cancellation was included. There are 175 statements which cancelled contracts in the set. They normally stated that the cancelation had occurred at the will of one or both of the parties. Sometimes a date of

[110] Epstein, "Secrecy," 314, 316, 324-325.
[111] Ibid., 316.
[112] Reyerson and Salata state similar in their "Introduction" to *Medieval Notaries,* 28.

cancellation was recorded, showing that the contracts were returned to from between months and years later.[113] It is not clear if cancellation suggests that the obligations contained in the act were completed or not. Nevertheless, they show that contracts were revisited after being written.

Another possibility is that the register was considered to be a collection of notes, and the acts were crossed out when they were copied in full into the main notarial register (see chapter 1). This is difficult to prove, however, as the notaries did not label their registers in a clear manner and each workshop may have followed a different system. Crossing out of contracts may have had the same effect as cancellation notes, recording that the obligations they contained were completed, therefore making the act nugatory. An agreement written by Jaume Ferrer on 7 May 1349 references the 'cancellation' and marking of a series of contracts after Michel Stigritito was repaid a debt by Jacobus Bruretii suggesting that cancellation clauses were recorded when the contract had been fulfilled. Stigritito's agent, Zafeti de Famagusta was to cause the trade document to be cancelled and sealed in the Famagusta Merchants' Registry ('faciam cancellari et anullari predictam scripturam comeriti [sic] Famaguste').[114] He was also to hand over his copies of the agreement, common practice in the case of debt settlement.[115]

Occasionally cancellation notes specified that the contract had been completed. On 11 March, Marchus de Maya recorded that he was satisfied that Pere Mora had satisfied the debt recorded in December for a voyage to Mostaganem (now in modern Algeria). The cancellation note stated that Maya was content with the contract and ended the relationship between himself, Mora, and the guarantor, Abraham ben Nabet, in front of two witnesses,

[113] E.g. AHPB, Jaume Ferrer 19/6, 6v2; AHPB, Jaume Ferrer 19/5, 97r-99r.
[114] AHPB, Jaume Ferrer, 19/6, 8r-8v.
[115] Reyerson, "Rituals," 97.

one of whom, B. Sala, was also witness to the original contract.[116] The registers were kept and returned to by notaries as well as parties and witnesses.

Notaries were understood as possessing authority as officially appointed public figures. This might lead to the role and writings taking on a formulaic character using set phrases in all cases following a particular scheme. However, this is not what the documents show. Instead, the texts vary in a number of ways and were bespoke and varied. The contracts that notaries wrote were collaboratively created, as the notary worked alongside the parties, drafting agreements which addressed the particular circumstances of the parties.

[116] ACM, PRT-14564, 119v2-120r.

2.4: Conclusions- notaries as collaborators in the formation of trust

The notary and his documents carried out integral trust work, collaborating with the parties to create bespoke relationships suited to the particular situation. Rather than simply 'a creation of political power', as Nussdorfer claims, notaries used their situation as public figures and creators of documents considered to possess public trust to create important social and economic connections.[117] The survival and revisiting of notarial registers testifies to their importance in the formation of long-term trusting relationships as well as the importance of the preservation and reliability of the documents after the death of the notary, parties, and witnesses.[118]

The notary and notarial institution played a key role in the trust work required by merchants and investors, as one of the interlocking and mutually-constitutive processes which established and maintained trust. Business could take place orally, without documentation: in his repayment of his relative, Pere de Mitjavila acknowledged that his debtor was free from all obligations and contracts related to the debt 'whether with written documents or without, up to this day' ('m cartis vel sine cartis usque ad hanc diem').[119] Parties chose to go to the notary and create a document with 'public faith'.

Nevertheless, this was only one part of the processes of trust work used by merchants. The public nature of the contract could not take the real-world risk out of deals. Management of the relationships being formed was one of the main ways in which the parties were able to decrease or manage risk, choosing phrases and obligations which suited their particular needs and demonstrated in the following chapters.

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[117] Nussdorfer, *Brokers*, 4.
[118] Zushi, "Negotiations," 213.
[119] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* doc. 92; Reyerson, "Rituals," 88.

Chapter 3 - Royal institutions as a component of commercial trust work

3.1: Introduction

> 'ne encara no solament galera ni lleny, mas no creu que nengun peix se gos alssar sobre mar si no porta hun [e]scut ab senyal del rei d'Aragó en la coa per mostrar guiatge d'aquell senyor rei d'Aragó.'
>
> [not even a fish dares rise out of the sea, any more than a galley or any other boat, without a shield bearing the sign of the king of Aragon in its tail, to show safe-conduct from the king of Aragon.]
>
> Bernat Desclot, *Crònica*, chap. CLXVI[1]

Writing about the exploits of Pere III of Aragon (1239-1285) during the Sicilian Vespers of 1282 in his *Crònica*, officially titled *Llibre del rey en Pere de Aragó e dels seus antecessors passats* (Book of King Pere of Aragon and of His Ancestors), Desclot recorded the words of admiral Ruggiero di Lauria, proclaiming the might of the house of Aragon on the Mediterranean Sea. The *Crònica* was written in Catalan from 1283 to 1288 and consisted of 168 chapters recording the legendary actions of the Counts of Barcelona from Ramon Berenguer III (1082-

[1] Bernat Desclot, *Crònica*, ed. Miquel Coll i Alentorn, vol. V, (Editorial Barcino, 1988) 124-125.

1131).[2] This one simple statement demonstrates the great importance of the diplomatic work of the kings of Aragon.

This chapter considers institutional and organisational trust work external to the notarial documents and how such work affected the individual trusting relationships formed by merchants. Cook *et al.* emphasise the need for 'multilevel analyses of the role of trust in society' [3] while Baier points out that 'we inhabit a climate of trust as we inhabit an atmosphere'. [4] The kings, royal administrative institutions, and ecclesiastical offices contributed to the trust work which formed part of the lives of Catalan merchants and investors.[5] While it was not enough alone, unable to manage the risks which came with placing money, goods, and trust in individuals, diplomatic trust work was one part of the larger puzzle of how and why trusting relationships were created and maintained in long-distance trade and large-scale risks managed and understood by individuals.

This chapter examines diplomatic correspondence between the Crown of Aragon and rulers of polities with which the merchants of Barcelona and Mallorca were trading in North Africa. The Italian city states negotiated their own treaties with these powers.[6] However, a focus on the Crown of Aragon is maintained here to analyse the specific 'atmosphere' in which Catalan merchants were operating. Extensive records of the written sources of the former Crown of Aragon mean that there are multiple studies of the links between the kingdom and other states across the Mediterranean,[7] though many focus on a later period.[8] While records

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[2] Jaume Aurell i Cardona, *Authoring the Past: History, Autobiography, and Politics in Medieval Catalonia*, (University of Chicago Press, 2012), 55.
[3] Cook et al., "Introduction," 9.
[4] Annette Baier, "Trust and Antitrust," *Ethics* 96, no. 2 (1986), 234.
[5] John Watkins, "Toward a New Diplomatic History of Medieval and Early Modern Europe," *Journal of Medieval and Early Modern Studies* 38, no. 1 (2008), 12-13.
[6] Stéphane Péquignot and Jean-Marie Moeglin, *Diplomatie et "relations internationales" au Moyen Âge: (IXe-XVe siècle),* (PUF, 2017), 564-566.
[7] Alarcón y Santón and García de Linares, *Los documentos árabes*; Dufourcq, *L'Espagne Catalane*; Henri Bresc and Rāġib Yūsuf, *Le sultan mérinide Abu l-Hasan 'Ali et Jacques III de Majorque: du traité de paix au pacte secret,* (Institut français d'archéologie orientale, 2011); Péquignot and Moeglin, *Diplomatie et "relations internationals"*.
[8] Roser Salicrú Lluch, *El sultanato nazarí de Granada, Génova y la corona de Aragón en el Siglo XV,* (Editorial Universidad de Granada, 2007); María Dolores López Pérez, *La Corona de Aragón.*

from the Archive of the Diocese of Barcelona and the notarial registers of the set also speak to the involvement of ecclesiastical institutions, especially the papacy in the regulation of trade, examination of this material is beyond the scope of this study.[9]

Rulers used their own trust-building language as a part of diplomatic correspondence which worked to create a space of peace or at least safe passage. The diplomatic work, carried out through and for merchants, managed some of the most serious risks they faced during long-distance ventures and contributed to the trust work required for commercial activity to take place. Merchant communities and ecclesiastical institutions also worked on behalf of individuals to solve specific problems and engaged with practices of arbitration and dispute resolution, a further form of trust work external to the documents.

[9] For studies on similar material, see Mike Carr, "Crossing boundaries in the Mediterranean: papal trade licences from the Registra supplicationum of Pope Clement VI (1342–52)," *Journal of Medieval History* 41, no. 1 (2015); Marie Kelleher "The Family Business: Royal Embargo and the Smugglers, Captain, and Councilors of Barcelona's Marquet Family," in *Merchants, Pirates, and Smugglers: Criminalization, Economics and the Transformation of the Maritime World (1200-1600),* ed. Tomas Heebøll-Holm, Philipp Höhn, Gregor Rohmann (Campus Verlag, 2019).

3.2: Peace and violence- diplomatic work as risk management

Parties to contracts placed their evidenced belief in the diplomatic work done by the kings of Aragon and royal administration to manage some of the real-world and physical risks they faced. Negotiations with foreign rulers dealt with large problems of peaceful cooperation and everyday details which affected the lives and ventures of merchants. Despite attempts to create a peaceful space for trade, the medieval Mediterranean was a space of violence, war, and danger. Diplomatic negotiations dealt with the problems of piracy, captivity, and redemption of merchants, seeking to minimise the risk of ventures. Merchants were part of this process, acting as ambassadors in diplomatic missions, paying royal officials to return captives, and returning captives themselves. This meant that the mercantile community knew about and was part of the diplomatic work to manage risks undertaken by the kings of Aragon. Alone, this was not enough trust work to enable merchants to undertake the risky ventures. However, it formed a part of the larger puzzle of trust work which made such relationships feasible.

A recognition of the simultaneous existence of peace and violence in the medieval Mediterranean is not new. Scholars have long emphasised the dangers of trade and travel on the Mediterranean Sea for travellers from both Christian and Muslim lands.[10] These risks added strain to the trusting relationships on which ventures were based. It is necessary to consider the ways in which these dangers were mitigated and the extent to which institutions operated as a support to mercantile activity.

It is not infrequent to find references to the state of 'war' which existed between Christians and Muslims on opposite shores: Dufourcq and López Pérez are two such scholars who frame Christian-Muslim relationships with the concept of ongoing 'war', perhaps

[10] Charles-Emmanuel Dufourcq, "Commerce du Maghreb Médiéval avec l"Europe Chrétienne et Marine Musulmane: Données connues et problems en suspens," in *L'Ibérie chrétienne et le Maghreb, XIIe-XVe siècles, 1914-1982*, ed. Charles-Emmanuel Dufourcq (Variorum, 1990), 184; López Pérez, *La Corona de Aragón*, 646-9.

influenced by an old fashioned understanding of the *dar al-islam*.[11] This was the idea that according to Muslims the world was divided into the space of Islam and the space of war. In other words, a space or polity was either Islamic or an enemy, with no in between. Rather than presenting an oversimplified picture of a constant state of war, scholars now tend to consider complex solutions and relationships between Muslims and non-Muslims in historical and geographical contexts.[12] As a part of this move against a problematic paradigm, the relationship between the rulers of Christian and Muslim lands is examined here to show how trust work was carried out by the kings of Aragon between members of different religious communities. Nevertheless, it is important to prevent a sway too far in the opposite direction, presenting the medieval Mediterranean as a harmonious space. Van Gelder and Krstić emphasise the need for a balance between the two extremes, in which religious and political tensions are examined alongside cross-confessional amity and the fluidity of identities.[13] The kings of Aragon negotiated on behalf of the mercantile community in relation to large and small issues. Letters between the rulers of Morocco, Tunis, and Egypt, and the Crown of Aragon demonstrate that peace was negotiated within a sphere of violence and danger, making the trusting relationships they both created and maintained particularly fragile as well as demonstrating the risks taken by merchants when engaging in long-distance trade.

Negotiations for a space of peace and cooperation formed a large part of the correspondence. Contacts between the kings of Aragon and Muslim states were extensive.

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[11] Dufourcq, "Commerce," 184; López Pérez, *La Corona de Aragón,* 646-9; Sarah Albrecht, *Dar al-Islam revisited: territoriality in contemporary Islamic legal discourse on Muslims in the West*, (Brill, 2018), 43-59.

[12] Alessandro Rizzo, "The Significance of the Written Word in European–Mamlūk Diplomatic Missions," *Al-Masāq* 34, no. 1 (2020), 15; Albrecht, *Dār al Islām Revisited*; Roser Salicrú i Lluch, "El sultanato Nazarí en el occidente cristiano bajomedieval una aproximación a través de las relaciones político-diplomáticas," in *Historia de Andalucía: VII Coloquio "¿Qué es Andalucía? Una revisión histórica desde el Medievalismo,* vol. 1, eds. Antonio Malpica Cuello, Rafael Gerardo Peinado Santaella, and Adela Fábregas García (Editorial Universidad de Granada, 2010).

[13] Maartje van Gelder and Tijana Krstić, "Introduction: Cross-Confessional Diplomacy and Diplomatic Intermediaries in the Early Modern Mediterranean," *Journal of Early Modern History* 19, no. 2-3 (2015), 99; Salicrú i Lluch, 'Sultano Nazarí," 67-71, 99.

Between 1290 and 1390, 26 embassies were sent from the Aragonese kings to Cairo.[14] Diplomatic negotiations for peace normally included free movement of travellers, merchants, and pilgrims, as well as limitations on taxation. For example, in November 1350, Abu Inan Faris of Morocco (r.1348-1358) wrote to Peter IV of Aragon to guarantee freedom of transit and security for their respective subjects for fourteen months:

> 'So all who want to travel from all lands of each of the two aforementioned rulers, on land or sea, can visit time and again under the provision of safety and health. And that neither a resident or traveller of these people is hindered and that no visitor of them or any trader is asked to pay anything of demands and costs except those requirements by the treasury.
>
> May God make this treaty fruitful. The document is a fixed and stable peace treaty, for a period of fourteen months, from the month of its date.'[15]
>
> [فيتردد جميع من اراد السفر من بلاد كل واحد من السلطانين المذكورين في البر والبحر على حكم التامين والعافية ولا يعترض منهم مقيم ولا مسافر ولا يطلب متردد منهم ولا تاجر بشئ من المطالب والتكاليف الا الواجب لبيت المال ثمره الله تعالى.
>
> صلحا ثابت الرسم مستقر الحكم لمدة من أربعة عشر شهرا من شهر تاريخه]

Peace treaties formed part of a policy by both the Marinids and Catalans to expand their sphere of influence in Mediterranean trade without military expansion or conquest.[16] The stipulations were typical of the peace treaties which survive. Each dealt with the question of safe passage and taxation. A letter from 1308, contained a list of responses to issues in previous correspondence from Jaume II. Abu Asida Muhammad II answered questions related to peace and safety between the two states, including a general request from Jaume that the goods and money of his subjects, particular merchants and consuls, would be safe in his lands. Abu Asida responded that 'these things are like this and greater than you think and you estimate/judge' ('وجوابنا انهم كذلك واكثر مما تظنون وتقدرون'). In other words, he assured Jaume that his

[14] Pierre Moukarzel, "The European Embassies to the Court of the Mamluk Sultans in Cairo," in *Mamluk Cairo, a Crossroads for Embassies: Studies on Diplomacy and Diplomatics,* eds. Frédéric Bauden and Malika Dekkiche (Brill, 2019), 686.
[15] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 106; ACA, *Cartes Àrabs*, doc. 106.
[16] Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, (Cambridge University Press, 1987), 111-113

wishes would be followed.[17] Abu Asida also confirmed that the Catalans were being taxed fairly in his lands, in the same manner as the Genoese, Pisans, 'and others'.

The same letter also demonstrates that, beyond efforts to create peace and cooperation, the rulers dealt in detail with everyday issues faced by the merchants. Abu Asida stated that there was concern about the use of an oven in the Christian fonduq in his land; there was a custom that each fonduq contain a specialised oven for cooking food and that Muslims were not allowed to cook with the Christian oven.[18] The Catalans had been renting out their oven to Muslims and keeping the profits, which Abu Asida considered problematic. He stated that all profits from the oven should be paid instead to the diwan: 'if they rent it to one of the Muslims to prepare food for Muslims in it, he who profits with it then returns his profits to the Diwan' ('فاذا اكتروه لاحد من المسلمين ليعمل فيه طعام المسلمين فمن استغنوا عنه فيرجع كراته للديوان').[19] The everyday actions of Catalan merchants became the concern of the rulers and part of negotiations. Presumably the issue of missing tax payments was a particularly strong motivation for intervention in small scale affairs of religious difference and separation.

The same letter also detailed how the rulers handled a shipwreck. Abu Asida explained that Bernat Marquet's ship was wrecked on the Tripolitan coast. The shipwreck itself and sale of goods was reported by 'Muslim merchants' of Tripoli ('تجار المسلمين من اهل طرابلس'), confirmed by the testimony of Alexandrian witnesses ('بشهادة شهود الاسكندرية'). The value of the boat and goods were corroborated by two Genoese merchants with documents written with 'Christian witnesses' ('واستظهر ايضا تاجران من الجنوين بعقود بشهادة النصارى عاملة عندهم'). Genoese and Pisan merchants aboard the ship testified to its correct value before the breakage ('وقد وقع الاشهاد على الاشخاص الحاضرين فى الجفن المذكور من الجنويين والبيشانين بقيمته صحيحا قبل كسره'). All of this was reported in a

[17] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 120; ACA, *Cartes Àrabs*, doc. 120.
[18] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 120; ACA, *Cartes Àrabs*, doc. 120.
[19] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 120; ACA, *Cartes Àrabs*, doc. 120; Olivia Remie Constable, *Housing the stranger in the Mediterranean world: lodging, trade, and travel in late antiquity and the Middle Ages* (Cambridge University Press 2003), 121-122.

document 'with Christian handwriting' ('والعقد بخط النصرى يصلكم').[20] The correspondence strongly emphasises the use of witnesses and writing to untangle everyday problems faced by merchants. Religious identity and citizenship were used as a defining characteristic of both people and writing to provide a detailed account of the kinds of evidence being relied upon.[21]

Not all diplomatic communication was plain sailing, however. Much of the correspondence demonstrates that the Aragonese kings had to manage mistrust between themselves and foreign rulers to maintain a form of peace and negotiate for the benefit of their mercantile subjects. Part of the nitty gritty interest in everyday affairs was the management of mistrust, dealing with complaints and threats with seemingly friendly but powerful and defensive language. The strained relationship between Abu Asida and Jaume dealt with acts of piracy committed by Catalans. Jaume had previously attempted to absolve himself of blame for acts of piracy committed by Catalans against the Sultan's people, explaining that Catalan pirates were using the lands of others to build and arm their ships. Therefore, it was not his fault. Abu Asida stated in response that:

> 'there is no difference between building in your country or your men going away with their money from your country to build with it in other places from yours. It was obligatory for you to stop them from [doing] this and take their money and reprimand them for it.'[22]
>
> وجوابنا انه لا فرق بين ان تعمر فى بلادكم او يخرج درجالكم باموالهم من بلادكم فيعمرون بها فى غير [جهاتكم وكان يجب عليكم ان تمنعوهم من ذلك وان تاخذوا اموالهم وتزجر.

Abu Asida even named some offenders: Pere Ribalta, Jaime Casteller, and a team of men had arrived in Tunis and captured a ship from al-Andalus. Ribalta was even a second offender whom Jaume should have arrested previously but was discovered attacking Tunis again. Abu Asida writes that, in a previous letter Jaume stated that he would punish Ribalta by capturing him and preventing him from further acts of piracy. However, 'nothing appeared from his words

[20] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 120; ACA, *Cartes Àrabs*, doc. 120.
[21] Rizzo, "Written Word," 17.
[22] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 120; ACA, *Cartes Àrabs*, doc. 120.

except this which occurred now, of this capture of a boat in our port' (' فلم يظهر من كلامه الا هذا الذى وقع الان من اخذ هذه الطريدة فى مرسانا ومع هذا كله لم يتعرض'). Taking the moral high ground in this event, Abu Asida noted that, despite Jaume's failure to follow his promises, the Catalan consul was treated with care and protection (' ومع هذا كله لم يتعرض هذا لقنصلكم ولا لاحد من جماعتكم بل هم على ما كانوا عليه من الاحتياط والرعى'). The language of obligation and, seemingly, trust was particularly strong, despite the discussion of broken promises and ignored obligations to maintain peace. As Liuzzo Scorpo points out, official agreements were not necessarily signs of genuine trust and friendship. Mistrust could co-exist with the maintenance of political agreements.[23] Rather than presenting a sincere 'friendship' between the rulers, the correspondence presents the rulers managing broken and abused political trust and seeking to navigate a tense path forward.

In this management of mistrust, the rulers dealt with the everyday issues and problems of merchants through careful language use, full of obligations. Péquignot and Moeglin highlight the language of friendship and amity in their study of ninth- to fifteenth-century 'international relations'. In the medieval west, they argue, the concept of friendship was a quasi-legal bond inherited from the Roman republic, which built social and political bonds and implied trust.[24] While their work focused on Christian, western traditions of thought, uses of the language of friendship and obligation in the diplomatic correspondence between members of different religious communities was central to the management of broken trust by rulers who sought a more peaceful future relationship.

Similarly, in a letter from 1313, Abd al-Wahid Zakariya ibn al-Lihyani of Tunisia complained that Jaume II had been authorizing piracy against Muslim countries, including Tunisia, while the peace treaty was in force.[25] Al-Lihyani was surprised that his regions were not excluded from an official call to piracy, as they had a peace treaty in force. Despite these

[23] Antonella Liuzzo Scorpo, *Friendship in Medieval Iberia: Historical, Legal and Literary Perspectives,* (Routledge, 2020), 144.
[24] Péquignot and Moeglin *Diplomatie et "relations internationals"*, 147, 150-153.
[25] Alarcón y Santón and García de Linares, *Documentos Árabes,* doc. 127; ACA, *Cartes Àrabs*, doc. 127.

complaints, the next year, 1314, al-Lihyani sent another letter to Jaume complaining about piratic acts. He complained that the stipulations of peace had been disregarded as pirates had come from the Crown of Aragon to his lands and seized a group of Muslims along with their money and merchandise.[26] To resolve the issue, the sultan sent a messenger, 'Ali, son of Muhammad al-Laqanti, with a letter to hear Jaume's answer. He continued that, even if there were no peace treaty in place, he would expect Jaume to punish the pirates and stop attacks on the region, 'because of the friendship' that existed between them ('لما بيننا من الود').

Al-Lihyani particularly cited the actions of Frederick III of Sicily (r.1295-1337) in a similar situation. It was claimed that, after hearing reports of piracy against al-Lihyani's people, Frederick ordered that the captured Muslims be set free, the goods taken from them be restored, and they be given clothes after hanging the corsair as punishment in the presence of the captured Muslim merchants. This was all confirmed to the Sultan through the signatures of eyewitnesses. He asked Jaume to follow similar conduct. [27] Negotiations centred appropriate mutual and corrective behaviour between the two sides, emphasising the importance of maintaining confidence between them. Wrongs needed to be righted, even though new wrongs were certain to take place. The letter demonstrates the rulers finding methods to manage the mistrust which existed between them; al-Lihyani sought to find a path forward, despite broken obligations and an abused relationship. The rhetorical tactic of holding the counterpart ruler to a standard supposedly set by another ruler was one method of seeking a change in behaviour, adjusting the relationship going forward to be more positive.

A significant part of the management of mistrust undertaken by the rulers was the negotiation of the return of captives. These negotiations directly impacted the risks undertaken by merchants. Rulers sought to minimise the chances of piratic aggression from foreign merchants, decreasing the likelihood that merchants might be captured, and

[26] Alarcón y Santón and García de Linares, *Documentos Árabes,* doc. 129; ACA, *Cartes Àrabs*, doc. 129.
[27] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 129; ACA, *Cartes Àrabs*, doc. 129.

negotiating the redemption of those taken. It was not uncommon for captives to be taken by both Christian and Muslim merchants. Dufourcq, Rodriquez, López Pérez, and Salicrú i Lluch all emphasise the high level of piracy by all sides across the medieval Mediterranean. There was little difference between warships and merchant ships; while some were equipped specifically for piratic goals, no 'cargo' vessel travelled without weapons. Thousands of Muslims and Christians were captives because of the piracy and raiding which was an everyday reality of trade.[28]

The kings of Aragon made the return of captives part of negotiations with other rulers. In 1319, Jaume II prepared instructions for an embassy to send to Tlemcen. The length of the truce was to be linked to the number of Christian captives released; a ten-year truce was possible if all captives were released, while freedom for 50 would equal only a two- or three-year agreement.[29] In response Abu Tasfin chose to release only five or six, as the release of all would affect the economy of the kingdom too greatly.[30] Four years later, Jaume sought the release of 24 Christian captives from Tlemcen which was granted alongside the release of 30 other Aragonese captives.[31] Similarly, in a letter from 1323, Marinid sultan Hilal ibn Abd Allah wrote to Jaume II in order to agree the return of twenty-four Christian captives and goods from Juan Manuel, as well as 30 additional captives of their choice in exchange for signing a peace treaty.[32]

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[28] Dufourcq, "Commerce," 174; Charles-Emmanuel Dufourcq, 'Les équipages catalans au XIVe siècles: effectifs, compposition, enrolement, paye, vie à bord', in Charles-Emmanuel Dufourcq, *l'Ibérie chrétieene et le Maghreb XIIe-XVe siècles,* (Variorum, 1990), 548-549; López Pérez, *La Corona de Aragón*, 645-763; Dufourcq, *L'Espagne Catalane*, 573-575; Jarbel Rodriguez, "Captivity and Diplomacy in the Late Medieval Crown of Aragon," in *Center and Periphery: Studies on Power in the Middle Ages in Honor of William Chester Jordan*, eds. Guy Geltner, Katherine Ludwig Jansen, William Chester Jordan, and Anne Elisabeth Lester (Brill, 2013), 108; Salicrú i Lluch, "Sultano Nazarí," 76.
[29] Rodriguez, "Captivity," 107.
[30] Alarcón y Santón and García de Linares, *Documentos Árabes,* doc. 91; Rodriguez, "Captivity," 113.
[31] Rodriguez, "Captivity," 113.
[32] Alarcón y Santón and García de Linares, *Documentos Árabes*, doc. 88; ACA, *Cartes Àrabs*, doc. 88; Sarra Ikram Hadef, "Dos cartas comerciales de los Banū Hilāl de Época de Jaime II y Pedro IV," *Revista Argelina* 17 (2023).

Rodriguez argues that captivity was instrumental to Aragonese foreign policy and diplomatic manoeuvring as negotiations over captivity 'created a framework for compromise, dialogue, and even cooperation'; missions began as attempts to return captives but grew to include a variety of other points related to trading rights such that discussions over captives were a tool for beginning, implementing, and maintaining treaties.[33] Masiá de Ros too suggests that captives were often a 'mere pretext' to disguise the real goal of ambassadorial expeditions, which was to send merchants and goods on a trading venture to a Muslim country.[34] However, there may be a simpler explanation for the situation than captives being a mere diplomatic tool; communication was infrequent and faced a variety of challenges, including distance, dangers of travel across sea, and complex and lengthy preparations.

Whether negotiations over captives were 'genuine' or a pretext for the discussion of peace treaties or both, it nevertheless meant that there was a form of assurance for travelling merchants that efforts would be made at the highest level to redress a major risk of trade. In these negotiations, the kings worked to minimise the risks of captivity for the mercantile community, providing institutional means for captured merchants to be returned. Whether captives were a bargaining tool or not, merchants were aware of efforts to return captives and royal engagement in their affairs. This was not necessarily a conscious or primary motivation of the rulers, but one of the effects.

Merchants were even involved in the process meaning that mercantile communities were aware of how royal diplomacy did risk-management work. Merchants were often employed to carry out diplomatic missions; on 20 August 1327, Jaume II announced to Muhammad Ibn Qalawn of Egypt that Pere de Mitjavila was travelling to his lands to return

[33] Rodriguez, "Captivity," 107-117.
[34] Ángeles Masiá de Ros, *La Corona de Aragón Y Los Estados Del Norte de África: Política de Jaime II y Alfonso IV en Egipto, Ifriquía y Tremecén* (Instituto Español de Stuidios Mediterràneos, 1951), 118; Rodriguez, "Captivity," 110.

captives.[35] The Mitjavila family was a well-known and powerful merchant family in Barcelona.[36] Pere de Mitjavila was present in six documents in the set of contracts, mainly in relation to his partnership with Arnaldus Sapherii.[37] Similarly, a treaty with the Mamlūks in 1290 was led by three ambassadors, including Esteve Noguera.[38] Coulon notes that he was a merchant and shipowner involved in trade with the western Maghreb in the late thirteenth century.[39] These merchant ambassadors were not unique but, as Salicrú i Lluch reminds us, part of the norm for Aragonese diplomacy.[40]

The use of merchants in diplomatic matters occasionally featured in notarial contracts. On 27 March 1278, a steward of Mallorca, Bernardus de Cesta, on behalf of Jaume II of Mallorca, tasked A. Caladat and G. de Costa, patrons of the ship 'Saint Vincent' to take a knight and envoy on their voyage to carry a message to Tunis and then onto Byzantium.[41] Bernardus de Cesta stated that he was unable to find another suitable ship in Mallorca for the voyage, which was why he was entrusting the merchants Caladat and Costa with the task.[42]

Merchants were also involved actively in the return of captives, either employing royal officials to undertake the task or acting themselves. If not released as part of diplomatic agreements, family members could barter for the return of captives or employ intermediaries

[35] Masiá de Ros, *La Corona de Aragón,* doc. 59.
[36] Víctor Hurtado, *Els Mitjavila:* una *família de mercaders a la Barcelona del segle XIV,* (Publicacions de l'Abadia de Montserrat, S.A., 2007); María Dolores López Pérez and José Ignacio Padilla Lapuente, "Mallorcan merchants in the medieval Maghrib: mercantile strategies in the port of Hunayn in the mid-fourteenth century," *Mediterranean Historical Review* 28, no. 2 (2013), 145-146.
[37] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* docs. 87, 88, 90, 92, 93, 94.
[38] Damien Coulon, "A Decisive Phase of Intense Diplomatic Negotiations between the Mamluk Sultanate and Western Powers (the Crown of Aragon, and the Republics of Genoa and Venice), 1288–1293/AH 687–692," *Annales Islamologiques* 57 (2023).
[39] Ibid.
[40] Roser Salicrú i Lluch, "Between Trust and Truth: Oral and Written Ephemeral Diplomatic Translations between the Crown of Aragon and Western Islam in the Late Middles Ages," in *Iberian Babel: Translation and Multilingualism in the Medieval and the Early Modern Mediterranean*, eds. Nuria Silleras-Fernandez and Michelle M. Hamilton (Brill, 2022), 127-128; Moukarzel, "The European Embassies," 688; Péquignot and Moeglin, *Diplomatie et "relations internationales,"* 569.
[41] ARM, ECR 349, 1r.
[42] Ibid.

known as *mostalafia,* often merchants themselves.[43] Over time *mostalafia*s became employed by the kings, receiving appointments to return captives. In the fourteenth century they were required to take an oath to royal officers.[44] Evidence of merchants working with the *mostalafia*s to return captives appears in the set. On 27 November 1242, a partnership was formed between Bernardus Rabassa and Guillemo Blader to make two return trips from Ceuta to Mallorca, acting as *mostalafias*, to transfer Christian and Muslim captives. They were to divide the profit in half.[45] The next year, on 30 March, Blader and Rabassa purchased a Muslim named Mahomet Al-Malechi from Martinus Bertrando for 46 bezants, 'according to the custom of the *mustalafie*'.[46]

Merchants recorded payments for the return of captives in notarial contracts, evidencing the mercantile community working to manage the risk of captivity. In 1325, Petrus Aragonum acknowledged repayment from Maria, wife of Petrus Sabateri for the redemption payment he made for Arnaldus de Valle Visbarri, captured by Muslims.[47] On 11 August 1335, Guillemus Torroni received 64 doubloons from G. Martorelli and Nichilaus Orplano to pay for the redemption of Raimundus Torroni captured by Muslims.[48] On 21 February 1316, an investment was made to return Bernardus [surname lost] from captivity in Ceuta.[49] These documents demonstrate that merchants created investments and partnerships as part of a process of returning captives, working with the royal officials and to return captives themselves.

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[43] James W. Brodman, "Captives or prisoners: society and obligation in Medieval Iberia," *Anuario de historia de la Iglesia* 20, (2011): 209-210; Maria Teresa Ferrer i Mallol, "Els redemptors de captius: mostolafs, eixees o alfaquecs (Segles XII-XIII)," *Medievalia* 9, no. 9 (1990): 86-88; Rodriguez, "Captivity," 108.
[44] Ferrer i Mallol, "redemptors," 86-88.
[45] Carme Coll Font, M. "El Llibre Manual de Pere Romeu, notari públic de Mallorca (1239-1243)," (PhD Diss. Universitat de les Illes Balears, 2012), 965-966; ARM, ECR 342, 126r1.
[46] ARM, ECR 342, 144v5.
[47] ACM, PRT-14554, 11v-12r.
[48] ACM, PRT-14545, 6v1.
[49] AHPB, Pere de Torre 6/2, 69v3.

Religious leaders of Barcelona were a further group involved in the return of captives, adding further powerful parties to the mitigation of risks. On 15 September 1318, the notary Raimundus Daches recorded that, following a request to Jaume II that merchants be sent as ambassadors to the 'Sultan of Babylon' to retrieve Christian captives, Raimundus de Vilalta, vicar of Barcelona, gave permission for Maymonus Dalmatii, a notary and vicar of Villefranche, and Raimundus Vicentii, a merchant from Tarragona, to send a ship to Alexandria to negotiate their return.[50] They were to take 'agreed upon merchandise' to be sold there in order to pay the redemption costs, if negotiations for their release were successful. On 20 September, Arnaldus ca Basada, merchant of Barcelona and patron of a ship, Berengarius de Raxache, ship's scribe, and Geraldus Oliveri, sailor, then agreed to board the ship under Papal license to ransom captive Christians captive and swore on the Gospels before the vicar of the bishop for their service.[51]

The bishop of Barcelona also financially supported the return of captives. On 6 June 1335 the bishop's notary recorded that Franciscus Brignera of Barcelona was captured by Muslim sailors and taken to Almeria. He promised that Petrus Ros of Mallorca would send 62 gold doubloons to buy his freedom. Two letters were recorded in which Brignera sought support from the bishop, in the form of alms and charitable aid to help him to discharge his debt to Ros.[52] Similarly, on 18 July 1332, the bishop of Barcelona granted permission for the redemption of various Catalan captives, kinsmen and loved ones of inhabitants of Barcelona taken during war by both Muslims and the Genoese. The diocese granted sums of money for the redemption of captives and forty days of indulgence from penance for those who donated.[53] By supporting the return of captives, the bishop of Barcelona contributed to managing the risk of captivity faced by Catalan merchants.

[50] ADB, RC 3 (1314-1323), 128v2-129v.
[51] ADB, RC 3 (1314-1323), 129v1.
[52] ADB, RC 6 (1334-1336), 197v1-198r.
[53] ADB, RC 5 (1330-1334), 80r-80v.

Despite all the problems it created for the Catalan mercantile community, piracy was nevertheless important in the Catalan trade economy; merchants were diplomats *and* pirates.[54] While the kings managed the expectations and mistrust of Muslim rulers, their subjects were embarking on legal piratic expeditions, contributing to the complex simultaneous existence of peace and violence, of trust and mistrust. On 9 July 1242, Pere, King of Mallorca, granted safety to Jacobus Barrenus and all of his goods and merchandise ('guidamus et assecuramus te Jacobum Barrenus ex omnia bona tua et merces') stating that he would not be required 'to respond to anyone or any persons for [his] seizure of the barbarian ship' ('sic quod non tenearis alicui respondere alicui persone vel aliquibus pro facto captionis navis Burburini').[55] Indeed, travelling for the purpose of raiding and attacking ships, was relatively common, particularly in regions around Al-Andalus before 1250. 28 documents recorded investments in voyages to Al-Andalus for the purposes of piracy and raiding. All were to 'Yspania', or southern Spain.[56] The south of the Iberian Peninsula was largely ruled by Christian powers by the 1240s. In 1212, the Almohads were defeated and the caliph al-Ma'mun withdrew from Iberia altogether in 1228. The new *taifa* kingdoms were progressively conquered by Portugal, Castile, and Aragon; Córdoba was conquered in 1236 and Seville in 1248. Some Muslim city-states survived as vassal kingdoms of Castile until the 1260s. Granada remained unconquered and ruled by Muhammad I, under the Nasrid dynasty, from 1238 to 1492. While the Catalan merchants may have been trading with Castilian-ruled states, the purpose of these voyages, as well as others to unspecified locations, was labelled as either 'against Saracens' ('contra sarracenos'), against the Moors ('contra mauros'), against the

[54] López Pérez, *La Corona de Aragón*, 679, 682.
[55] ARM, ECR 342, 84r1; 'Burburini' can be read as 'barbarini', see entries "burburicarii", "barbaricarii", and "barbaricus" on "Logeion," https://logeion.uchicago.edu/burburicarii, https://logeion.uchicago.edu/barbaricarii, https://logeion.uchicago.edu/barbaricus.
[56] ARM, ECR 342, 14r6, 16v2, 16v3, 25r1, 25v1, 27r2, 49r2, 80v1, 82r3, 87v2, 98r2, 102v1, 104v1, 105v4, 107r1, 110v4, 113v1, 114v4-115r; ARM, ECR 343, 102r1, 110r4, 174r2, 175r3, 183v4, 185r3, 190v5, 218r5, 230r3, 271v3.

enemies of the cross ('contra inimicos crucis'), or against the enemies of the King of Aragon ('contra inimicos domini regis'), revealing their piratic goals.[57]

Finally, the kings of Aragon worked to establish institutions in foreign spaces to support mercantile activities. Royal provision of *fonduqs* and consuls aided in the smooth functioning of business for merchants.[58] *Fonduqs* served as hostelries, warehouses, tax-stations, offices, prisons, and brothels for merchants in foreign states.[59] Consuls operated within *fonduqs* to administer justice, solve disputes between merchants, and act as intermediaries between the Catalans and local authorities.[60] The earliest Catalan consulates were in Tunis and Bugia; Ferrer i Mallol notes that the *fonduq* in Tunis was fully operational and had a consul appointed by the king by 1253.[61] From 1262, Jaume I created the position of consul for the Catalan *fonduq* to be established in Alexandria.[62] Dufourcq notes that from the second half of the thirteenth century, consuls were appointed by Barcelona's municipal authorities and *fonduqs* were considered to be owned by the king, though they were used by merchants.[63] These royal administrative efforts created an important set of institutions within which merchants could operate abroad.

Parties to contracts placed their evidenced belief in diplomatic work done by the kings of Aragon and royal administration to manage some real-world and physical risks that they

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[57] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, docs. 12, 13. There was a great amount of diplomatic negotiation with Granada, e.g. Ángeles Masiá de Ros, *Jaume II, Aragó, Granada i Marroc: aportació documental,* (Consejo Superior de Investigaciones Científicas, 1989); Salicrú i Lluch, "Sultano Nazarí", 77.

[58] Constable, *Housing*; Kathryn L. Reyerson, "The merchants of the Mediterranean: merchants as strangers," in *The Stranger in Medieval Society,* eds. Frank R.P. Akehurst and Stephanie Cain Van D'Elden, (University of Minnesota Press, 1997), 8; Stephen Bensch, "The Commercial Surge of Catalonia," in *Jaume I: commemoració del VIII centenari del naixement de Jaume I*, ed. Maria Teresa Ferrer i Mallol, vol. 2 (Institut d'Estudis Catalans, 2013), 628.

[59] Constable, *Housing*, 2.

[60] Maria Teresa Ferrer i Mallol, "El Consolat de Mar i els Consolats d'Ultramar Instrument i Manifestació de l'Expansió del Comerç Català," in *L 'expansió Catalana a la Mediterrània a la Baixa Edat Mitjana, Actes del Seminaire-Seminari organitzat per la Casa de Velázquez (Madrid) i la Institució Milà i Fontanals (CSIC Barcelona)*, (Institució Milà i Fontanals, 1999), 65.

[61] Ibid., 66.

[62] Coulon, "Decisive Phase"; Ferrer i Mallol, "Consolat de Mar," 66.

[63] Charles-Emmanuel Dufourcq, "Les consulats catalans de Tunis et de Bougie au temps de jacques le conquérant," *Anuario de Estudios Medievales* 3 (1966): 469-470.

faced. Negotiations with foreign rulers dealt with large frameworks of peaceful cooperation and everyday details affecting the lives and ventures of merchants. Merchants were part of this process, acting as ambassadors in diplomatic missions, employing royal officials to return captives, or working themselves to return captives. The mercantile community knew about and was part of the diplomatic work to manage risk undertaken by the kings of Aragon.

3.3: The trust work of the courts

The legal administration of the Crown of Aragon played a part in the trust work needed for merchants to undertake long-distance ventures. Merchants had the option of going to court or undertaking arbitration should their contracts and relationships go wrong. Notaries were a part of the recording of proceedings related to dispute resolution, both in formal court settings and informal arbitration cases. Arbitrations sat in between the formality of court and the informality of mediation by friends, as each party submitted to the decision of chosen arbitrators.[64] The courts of Catalonia, of the crown and related secular authorities, the merchants' *Consolat de mar*, or the church, were formal settings to which disputes could be taken if needed, providing an opportunity for merchants and investors to protect their property. These settings of dispute resolution were one part of the trust work which merchants might have needed if ventures failed or parties committed malfeasance or nonfeasance.

There were a variety of courts operational in Barcelona and Mallorca open to merchants. Like in other places in medieval Europe, Catalan merchants would have been able to choose the court they thought would most support their lawsuit or entered the same suit in different tribunals at the same time.[65] The highest court was the *royal audiencia*, an assembly celebrated every Friday and administered either personally by the king or by his lieutenant-general. This court was largely reserved for those with significant money or influence who could access it as a first instance. However, it also served as a final court of appeal for all lower courts; the practice of 'evocation', increasingly common during Jaume II's reign, meant that cases could be 'called up' from lower courts. This practice was associated with the desire to safeguard the correct administration of justice, especially where one of the

[64] Forrest, *Trustworthy Men,* 56.
[65] Lluis Sales i Favà, "Suing in a local jurisdictional court in late medieval Catalonia. The case of Caldes de Malavella (1328–1369)," *Continuity and Change* 29, no. 1 (2014): 61; Emily Kadens, "Order within Law, Variety within Custom: The Character of the Medieval Merchant Law," *Chicago International Law* 5, no. 1 (2004).

parties was at a disadvantage. This meant that travellers and merchants whose 'expatriate status' meant that they might lack the full protection of local law were often served by this court.[66] By the late thirteenth century, local courts were run by royally-appointed judicial representatives. In a town or village and its surrounding territory, this was the *batlle*. The *veguer* oversaw larger areas of territory corresponding roughly to the boundaries of older counties through a court with more authority, able to try cases of any type.[67] The *veguer* and *batlle* were appointed officials who did not require legal or judicial training. They had a trained legal expert as a member of staff to consult on cases.[68] In Barcelona, by the 1190s, the *veguer* was closely tied to a regularly functioning court, which from 1229 had a permanently attached scribe.[69] Ecclesiastical courts also solved disputes between clerics and other rare cases.[70] Sales i Favà notes that in the north of Catalonia judges were not in possession of an office belonging to the court structure. They were legal experts, usually citizens, who moved around the estates and offered knowledge to judicial procedures or mediated disputes.[71]

An organisation which oversaw the rights and powers of Barcelona merchants, including arbitration procedures and dispute settlements in court was also created. In 1258, Jaume I, officially recognised the *Ribera,* the nucleus of mercantile commerce, as a delimited area in the city and granted merchants and sailors privileges, allowing them to create an administrative body called the *universitat dels prohoms de Ribera* (council of the powerful men of the *Ribera*). The merchants elected a *prohom major* (main powerful man) to represent the body and protect the interests of the *Ribera*, independently from the royal officials of the

[66] Marie A. Kelleher, *The Measure of Woman: Law and Female Identity in the Crown of Aragon, Middle Ages* (University of Pennsylvania Press, 2010); M.A. Zapata, *Les jurisdiccions locals en el pas de l'edat mitjana a l'edat moderna*, (Caixa d'Estalvis Laietana, 1998), 37, 42-43.
[67] Kelleher, *Measure*, 31; Sales i Favà, "Suing"; Bensch, *Barcelona*, 59, 61, 69-7.
[68] Kelleher, *Measure*, 31.
[69] Bensch, *Barcelona*, 73, 79-80.
[70] Ibid., 76.
[71] Sales i Favà, "Suing," 69-72; Bensch, *Barcelona*, 74–80. See also Josep Maria Pons Guri, "Ordinacions processals del vescomtat de Cabrera (anys 1392-1520)," in *Recull d'estudis d'història jurídica catalana*, ed. Josep Maria Pons Guri, vol. 1 (Fundació Noguera, 1989), 77-84.

veguer and *batlle*, who could not interfere with the affairs of the new community.[72] In 1258 the new *universitat* created maritime rules (*ordinacions*) approved by the king.[73] In 1279 it became the *Consolat de Mar*, with a similar structure, although with two consuls now chosen by merchants of Barcelona and the intention of representing the merchants and sailors of the whole city.[74] From 1348, the *Consolat* was restructured following the Mallorcan model with two consuls and a judge of appeals, chosen by the *Consell de Cent* (Council of 100), the representative assembly of the city of Barcelona, who heard appeals to consuls' judgements. Before 1348, the consuls were responsible for arbitration and advice to the ordinary courts, especially for matters related to what was to become the *Llibre del Consolat de Mar* (Book of the Consulate of the Sea).[75]

Though merchants worked with notaries to create contracts which suited their needs and, as we shall see in chapter 4 and 5, sought to reduce the risk of disputes, we find litigious responses to failures to keep agreements. On 26 April 1349, the notary Francesch Balle recorded that Guillemus Porreti, Bernardus Olivieri, and Franciscus Perera chartered the ship, 'Saint Antonius', owned by Franciscus Nequero, to sail from Mallorca to Cagliari, before proceeding to Naples, various places in Calabria, and returning to Mallorca. This planned journey was recorded in the register of another notary, Stephanus de Palacio, ('alia in instrumento dicti nauleamenti inde facto in posse Stephani de palacio notarius maiorice'). However, the shipowner, Nequero, violated some of the agreement. Nequero delayed the ship's departure from the port of Mallorca and did not obtain the required cargo in the preceding month. The merchants complained that, even though the weather was favourable and suitable for sailing, ('licet bonum tempus et aptum sit ad navigandum in dicto viatico')

[72] Maria Teresa Ferrer i Mallol, "Sobre Els Orígens Del Consolat de Mar de Barcelona, El 1279, i Els Cònsols d'Ultramar a Bord de Vaixells. Un Exemple de 1281," *Anuario de Estudios Medievales* 23 (1993): 141; Ferrer i Mallol, "El Consolat de Mar," 58-61.
[73] Ferrer i Mallol, "Consolat de Mar," 58-59.
[74] Ferrer i Mallol, "Els Orígens," 143; Ferrer i Mallol, "Consolat de Mar," 61.
[75] Ferrer i Mallol, "Consolat de Mar," 62-64.

Nequero stayed in Mallorca. This delay, they claimed, had caused 'great detriment and loss' ('hoc in grande nostrum et prædictorum dampnum, præjudicium et peturam').[76]

To support their case, Porreti, Olivieri, and Perera, named the merchants Johanes Poncii and Nicolaus Blantis as procurators with authority to demand the fulfilment of the contract, both in and out of court, and to take legal action if necessary. Nequero was also required to pay for the damages and losses they incurred. The merchants expressed their intent to take legal measures to protect their rights and interests by employment of further public documentation through their new agents: 'ad requirendum inde vobis fieri et tradi publicum vel publicam instrumentam [sic], si necesse fuerit, per quamcumque notarius vobis melius videatur, in conservationem iuris nostri et vestri' ('to demand from there that a public instrument be made and delivered to you, if necessary, by whichever notary you deem best, for the preservation of our rights and yours').[77] The appointment of Poncii and Blantis as agents appeared to be a first important step for the merchants to challenge Nequero. The agents were part of the larger process of justice open to the mercantile community.

Complaints or disagreements were very infrequently referenced in the notarial agreements; there are four in the set. This is unsurprising given the nature of the work of the notary, to establish relationships. More can be found in records of royal and ecclesiastical courts.[78] Occasional references to disputes show, nevertheless, that when a trusting relationship did breakdown, the work of the notary was used, either as references to past documents or to set up agents or arbiters to negotiate settlements.

Arbitrations were a further form of dispute resolution open to merchants. In combination with registration of a payment after a long-distance trade, Francesch Balle

[76] ACM, PRT-14566, 91r2–91v.
[77] Ibid.
[78] It has not been possible to include an examination of these documents as a part of this project. Future research should involve a study of these records. E.g. Marie A. Kelleher, "Hers by Right: Gendered Legal Assumptions and Women's Property in the Medieval Crown of Aragon," *Journal of Women's History* 22, no. 2 (2010): 34–55.

recorded on 13 February 1341 that Petrus Massoti had refused to pay Johannes Andree the agreed price of £5 5s. for wool. This ended an agreement which set up Anthonius Berart of Marseille as agent for Andree. Franciscus Brondo, merchant and citizen of Mallorca, had bought the wool on Andree's behalf, who then sold it to Massoti. As a result of Massoti's dispute over the price, the matter was to be arbitrated, and Bernardus Gili and Guillemus Cudines were chosen as arbitrators by both parties.[79] We do not have the result of the dispute though the complex relationship between the merchants must have caused some financial trouble. The casual addition of the dispute and use of arbiters at the end of the contract also presents this procedure as standard practice, even though it does not appear in any other agreements in the set.

Arbitration also took place between religious groups. On 18 December 1242, B. Rotlanda is recorded to have been repaid by Bertrandus de Tevisa and Jafie Bonafos, the latter labelled as Jewish ('Judeo'), following a decision made by two arbitrators.[80] The arbitration related to an agreement for part of the profits of a shipment of Muslim captives to Tunis. Tevisa and Bonafos paid Rotlanda a third of the ship's cargo, as commanded, such that the contract records the end of their disagreement. A royal official served as one of the arbitrators; the chosen arbitrators were recorded as Master Johannes, representative of the prince ('Magistri Jo domini Infantis'), and R. den Tos. Neither of the arbitrators served as witnesses; presumably arbitration happened separately before the repayment was made in front of the notary.

It seems common for royal officers to have been involved in dispute resolution. While organising his voyage to Morocco in September 1242, G. Scribe received service agreements from Berenguer de Calderes of Manresa, Michaelis de Monte Albano, and G. de Sant Mateu.[81] While Monte Albano also invested 30 silver bezants in the voyage, both his service agreement

[79] ACM, PRT-14564, 140v-141r; Bensch, *Barcelona*, 75.
[80] ARM, ECR 342, 134v1.
[81] Ibid., 97r1, 97r3, 99r1.

and investment were cancelled before the voyage took place.[82] Sant Mateu invested 30 silver bezants and appears to have undertaken the travel and service to Scribe.[83] At the time of repayment, an issue occurred and the deputy vicar of Mallorca, A. of Lleida, had to intervene. Under the original investment text by Sant Mateu a note was added on 26 June 1243, squeezed in before the start of the next contract, stating that Lleida objected to the investment contract as Scribe had raised an objection that he should not have to pay more than 50s. The reason for his complaint was not included. Perhaps the voyage did not go as planned or the service provided by Sant Mateu was not satisfactory. The intervention of the deputy vicar of Mallorca demonstrates that mercantile activity was actively overseen by the administrative structures of the city and kings. It also neatly shows that the notarial instruments were dynamic, being referred to and changed as the contracts, events, and relationships took place and developed.

Similarly, a disagreement between Jaume Dierga and Pere de Pirario, and Pere de Talarn was brought before the court of the *veguer* of Barcelona for settlement. The outcome was written by Bernard de Aversone, a notary of Barcelona acting as scribe for the *veguer*'s court. The disagreement was based upon two central claims. Dierga and Pirario claimed that Talarn failed to repay them £30, 9s. minus 1d. from a payment of £150 in exchange for delivery of 40 gold ounces and 7.5 tarins. There was to be a penalty of 30 gold ounces as a result of non-payment. They additionally claimed £150 as damages and interest and 95s. for the provisions used in a voyage they made to Sicily on a ship owned by Nicholaus Ros.[84] Talarn agreed to pay these various debts and fines and stated that he would repay them £22, made up of 40s. for the provisioning of the ship and £20 from the debt. Talarn was to pay two-thirds of the debts of £22 (£14, 13s. and 4d.) at the time of the agreement, from a payment he received from the king as a soldier. The rest (£7 5s. 8d.) would be paid after the king next paid

[82] Ibid., 99r1-2.
[83] Ibid., 97r3-4.
[84] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 14.

his knights, on the feast of Mary on 8 September. This was confirmed with two sealed receipts presented to Dierga. After the payments were made, Dierga was to return the receipts and all other related instruments to Talarn, as they would all be considered void and of no value. Dierga stated that he would follow this requirement.

In response to Dierga's and Pirario's claims, Talarn accused them of usury. However, the court found no basis for such an accusation as Talarn stated in the contract that he would 'impose silence' on himself forever ('michi etimeis super predictis scilentium impono sempiternurn') and would not make the claim in court again.[85] Dierga and Pirario also promised to impose silence on themselves in relation to the matter of the debt payment when repayment was completed. Dierga, who was acting on behalf of himself and Pirario as his attorney, stated that if Pirario sued Talarn in future in relation to the debt, he, Dierga, would not act against Talarn but instead support him against the claim. Nevertheless, one complaint remained unsettled. Talarn claimed that Dierga and Pirario opened a box he owned without his permission during the voyage to Sicily. In response, Dierga stated that he and Pirario did no such thing. There was no conclusion presented to this issue by the court.[86] The great number of debts suggests that issues needed to build up before they were taken to court. The settlement was for a part of the claim; a middle point between the petitions of the two parties was accepted with the aid of a royal official, preventing further disputes or harmful discussion of the conflict.

Formal and informal dispute resolution using legal administrative structures was one part of the trust work open to merchants if a party failed to fulfil their obligations. Dispute resolution through arbitration or the Catalan law courts provided an opportunity for merchants and investors to protect their property in case of conflict. Royal officials appear as part of these resolutions, providing a form of institutional security to the risky agreements crafted by

[85] Ibid.
[86] Ibid.

notaries. However, as will be shown in the following chapters, merchants went to great lengths to use varied language, risk management, and character management to avoid disputes. The presence of courts and arbitration was not sufficient for the formation of trusting relationships. It was one piece in the larger puzzle of trust work.

3.4: Conclusion

Institutional and organisational trust work supported interpersonal relationships between merchants and investors. Diplomatic work, carried out through and for merchants, managed some of the most serious risks they faced as part of long-distance ventures and contributed to the trust work required for commercial activity to occur. Merchant communities and royal institutions worked on behalf of individuals to solve specific situations with arbitration and dispute resolution, engaging in a further form of trust work. But, as the evidence of the notarial registers attests, diplomacy and legal enforcement were not regarded as sufficient guarantees for a trusting relationship to emerge.

Chapter 4 – Objects and persons as risk-management techniques

4.1: Introduction- pledges, penalties, and guarantors

The wider institutional and organisational trust work alone could not solve the central uncertainties of long-distance trade across the medieval Mediterranean. Individual personal relationships worked with these uncertainties, using a variety of risk-management techniques. This chapter explores how parties used a variety of methods to build trust in the face of great risks to trade.

Risk-management techniques, in the form of securities and guarantees of payment aided in the formation of trusting relationships. Pledges and penalties provided explicit methods of repayment should the merchants fail to deliver as promised in a contract. Guarantors were used to underwrite agreements so that the investing party could rely on the assets of a third party should the travelling party face unexpected difficulties. These risk-management techniques could not remove the real-world risks involved in the conduct of long-distance trade. However, they lessened the risks borne by the investing party. As such, the use of such techniques in notarial contracts created the expectation of a future relationship in which the travelling party required additional supports to their trustworthiness and show the intense trust-building work done by notarial contracts.

4.2: Pledges and Penalties

There were a variety of methods available to merchants and investors to add protections to their contracts. Many agreements used pledges or penalties to present clear outcomes for failure to fulfil the contract. They were a risk-management technique which assured investing parties that their investments would be returned despite any problems with the venture or travelling parties. For travelling parties, they served to build confidence in the investment for the investing party, facilitating the creation of a future relationship of trust.

In the documents, a pledge was used to refer to an object and not a person (such as a guarantor) as it could be elsewhere. Roman law recognised three types of surety: in *fiducia* the ownership and possession of the pledged goods were transferred from the debtor to the creditor at the creation of the agreement; in *pignus* possession was transferred to the creditor while ownership remained with the debtor; in *hypotheca* ownership and possession were only transferred when the debtor defaulted.[1] Kosto argues that the differences between the three categories were lost by the Middle Ages.[2] However, in the documents, the words were used to denote different situations; pledges were given with the verbs 'obligare' or 'pignere', or the pledge was labelled as under hypothecation ('sub ypothicam'). The placement of goods under obligation using the word *obligare* and *ypotheca* created the same category of pledge, so that possession was only transferred when the debtor defaulted. *Pignere* phrases, instead, denoted that objects were handed over there and then.

835 (58%) of agreements included the verb *obligare,* either to state a general pledge of all goods or pledge specific goods or money as collateral, making it the most common form of surety, following the *hypotheca* model. Only 28 (2%) used the term *pignere*. Four of these were written by a notary in Barcelona. 22 agreements (1.5%) used the term *ypotheca*. Only three of these were from a document by a Barcelonan notary while the rest were all written

[1] Adam J. Kosto, *Hostages in the Middle Ages,* (Oxford University Press, 2012), 131.
[2] Ibid.

by the Mallorcan Francesch Balle in his register PRT-14564. Notarial influence seemed to be the most important factor in the choice of word used for a pledge in the *ypotheca* model as phrases using *obligare* and *ypotheca* both denoted this type.

A small number of agreements used all three terms, allowing us to examine the different actions to which they referred in this context. On 29 August 1340, Francesch Balle wrote an agreement for Jacobus de La Scalelea to charter a ship owned by Petrus Sauarres and Jacobus Salans. The voyage was outlined in detail as a part of the agreement. Sauarres and Salans would sail the ship while Scalelea was to provide the goods. The shipowners also invested £50 in Scalelea's collection of goods, for which they sought collateral worth £100. The term 'pignera' was used for the collateral and it was stated that they would hold onto the pledges until repayment was made:

> 'vos tradatis et tradere teneamini nobis que ipsas L libras vobis mutuabimus tot pignera quot valeant bene Centum libras que pignera vos teneamus et tenere possimus ex dicto pacto donech nobis tradideritis seu in dicta cocha miseritis et oneraveritis'.[3]
>
> [You shall deliver and be bound to deliver to us as many pledges as are worth a full £100 for the £50 we will lend to you, which pledges we shall hold and may hold by the said agreement until you have delivered to/repaid us or sent and loaded them in the said boat.]

As the investment of £50 was to be used to buy goods for the voyage, the pledges were to be held by Sauarres and Salans until the goods purchased with their investment were loaded onto the ship by Scalelea. The shipowners also stated that they were to complete their side of the agreement under the pain of forfeiting all their goods: 'promitimus […] accendere et complere […] obligantes […] omnia bona nostra ubique praesenciam et futura' ('we promise to fulfil and complete [the agreement], […] binding ourselves […] with all our goods, present and future, everywhere'). The agreement ended with a promise from the travelling party,

[3] ACM, PRT-14564, 65v-67r.

Scalelea, to complete the agreement without contravention on penalty of £100 ('sub pena Centum libras'), acquired under hypothecation of the goods being traded ('sub ypothicam bonorum partis nostrum'.[4] The pledge ('pignera') in relation to the £50 investment for the purchasing of goods was to be handed over there and then. The goods under obligation and *ypothica* ownership changed possession only if/when the debtor defaulted. Scalelea was the one carrying out both obligations, handing over the pledged goods worth £100 and risking a further penalty of £100. This one agreement demonstrates two different ways in which goods and collateral of different forms using three terms were used to build trust and minimise risk.

The most common form of surety was the offering of all assets as collateral. These sureties took the form of an *hypotheca* in which, as demonstrated by the obligation between Sauarres and Salans, neither possession nor ownership changed at the time of the agreement. 788 agreements included a pledge of all goods (54.9% of the set). In his study of warranty obligations in medieval France, McHaffie notes that after 1200 there was an increase in 'Roman-inspired ideas of hypothecation, whereby a debtor committed his entire substance – but retained control over it – as a real surety to cover a creditor's potential loss.'[5] Similarly, Gay finds that in contracts from Burgundy, the phrase 'obligatio omnium bonorum' began to appear relatively frequently from 1250 and was beginning to be replaced by 'obligans etc.' by the middle of the fourteenth century because the practice had become so usual.[6] Pollock and Maitland too find that the phrase 'obligo omnia bona mea mobilia et immobilia' was usual in medieval English contracts.[7]

The Catalan agreements thus conform to a widespread pattern. The earliest registers in the set already contain an abbreviated form of the pledging of all goods ('super omnia bona

[4] Ibid.
[5] M.W. McHaffie, *Warranty Obligations in Western France, 1040-1270,* (Springer Nature, 2023), 34.
[6] Jean Gay, "Aux origines de l'obigatio omnium bonorum dans le comté de Bourgogne," in *Droit privé et Institutions régionales: Études offertes à Jean Yver*. (Presses universitaires de Rouen et du Havre, 1976), paragraphs 3-4.
[7] Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I,* vol. 2, (Cambridge University Press, 1909), 3.

nostra etc.' ('on all of our goods etc.') and use of the phrase continued in the latest registers, often included in full and unabbreviated form in both Mallorca and Barcelona.[8] Sometimes the pledge was for all moveable and immovable goods ('mobilia et inmobilia' appears in 69 agreements), all but two of which were written in Barcelona across the period. Sometimes the pledge extended from presently owned goods into the future. 100 used the phrase 'habita et habenda' while 14 use the term 'presenciam et futuram'. Occasionally Francesch Balle used the term *ypothica* to obligate all goods: 'promito teneri de Rato sub ypothicam bonorum meorum'.[9] Nevertheless, hypothecation was implied by every obligation of this type.

In contrast, only 43 documents identified a particular object or amount of money as collateral to the agreement, presumably following the *pignus* model of pledging, in which possession but not ownership was transferred at the time of the agreement. 36 of these were from Mallorca while seven were from Barcelona. These documents were written across the period. One of the most common forms of collateral was the ship undertaking the venture, occurring eight times.[10] Similarly, in eight agreements cloaks or fabrics were used as collateral.[11] In four agreements a part or all of the profit made from the voyage was used as collateral.[12] In six agreements goods carried on the ship were to be used: twice the goods were not specified but labelled generally as 'goods'. For example, one collateral was 'predictas res et merces quos in dicto ligno vestri et carricari' ('the aforementioned goods and merchandise, which are to be loaded and carried in your said ship').[13] In two agreements, oil which was carried on ships was chosen as collateral.[14] One contract used animals carried on

[8] ARM, ECR 342, 133v3; AHPB, Jaume Ferrer 19/5, 42r.
[9] ACM, PRT-14564, 122v1, 151v-152r, 159r-160r, 160v-161r, 161r-161v, 162r, 162v, 163r.
[10] ARM, ECR 342, 32v4, 194r1, 197v3; ARM, ECR 343, 217v2; ACM, PRT-14564, 6v1-7r; ACM, PRT-14566, 64v; AHPB, Pere de Torre 6/2, 151r4-151v, 190v3.
[11] ACM, PRT-14545, 67r2; ARM, ECR 343, 133v1, 274r3; ARM, ECR 342, 32v4, 105v1, 139r1; ARM, ECR 345, 20v2; AHPB, Pere de Torre, 6/2, 178v3.
[12] ARM, ECR 342, 36r4, 91v5, 111r1, 132v1.
[13] AHPB, Pere de Torre 6/1, 15r1; see also, ACM, PRT-14566, 53v2.
[14] ARM, ECR 342, 149v2, 215r2.

the ship.[15] Finally, one contract used the hides being transported as collateral.[16] In three agreements armour or weapons of some kind were listed as collateral,[17] while in one a number of precious stones and metals were listed.[18] In four agreements specific sums of money were collateral,[19] while in one horses and lands were used,[20] and in another a saddle was used.[21] In one agreement, what appears to be red rosin was used[22] while in another the pledged object cannot be identified: 'burqurnarum'.[23]

Half of agreements using collateral (22) were written before 1300, suggesting that the practice changed little over time. There was little relation between the amount of the investment and the use of collateral. The smallest investment for which collateral was used was 5s.[24] while the largest was £541, 4s. 7d.[25] or 600 silver bezants.[26] The *comanda* agreements which used collateral planned to trade in a variety of locations; there are no patterns in voyage destination.

All the contracts which used fabrics as collateral were for relatively low amounts, between 12s. and 120s. Contracts which involved larger investment amounts commonly listed numerous objects as a part of the collateral. For example, for an investment of 50 silver bezants collateral of two horn crossbows ('ballistas') and three chain mail coverings ('auzberes'), one with leg covering ('caligis') and two without was used, while for an investment of 600 silver bezants the collateral was chests, lances, shields, helmets, coats, and 'all other various arms and garments' ('omnia alia universia armamenta et vestes').[27]

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[15] Ibid., 198v2.
[16] ARM, ECR 366, 38r1.
[17] ARM, ECR 342, 129r1, 139r1; ARM, ECR 345, 119v.
[18] ARM, ECR 344, 215v3-216r.
[19] ARM, ECR 343, 243v4–244r; ACM, PRT-14554, 11v2; ARM, ECR 345, 20v2, 23r1-23v.
[20] ARM, ECR 343, 213r4.
[21] ARM, ECR 345, 20v2.
[22] ARM, ECR 344, 190r4: 'obligo ii ronsinis[?] virmilios' ('I pledge two red rosins[?]').
[23] Ibid., 178v3.
[24] ARM, ECR 342, 111r1.
[25] ACM, PRT-14554, 11v2.
[26] ARM, ECR 345, 119v.
[27] ARM, ECR 342, 129r1; ARM, ECR 345, 119v. Also see: 'Ballesta' in Miguel Gual Camarena, *Vocabulario del comercio medieval. Colección de aranceles aduaneros de la Corona de Aragón (siglo*

Collateral in the form of parts of the profit of the voyage varied greatly. There are four agreements with investments of 5s. for 2.5 parts of profit, 28s. for 1 part of the profit, 120s. for all parts, and £6, for unspecified parts of the voyage.[28] These variations may suggest that there was some knowledge of the normal return of voyages, allowing the investing party to value their investment appropriately, despite the great market variations and unknown conditions which the travelling party would face. Contracts which used the ship undertaking the voyage as collateral were also for varied investment amounts. This may be related to the type of ship.[29] The cog (*coquam/cocham/cocam*), a synonym of *nau*, or ship, normally had one mast with a large, square-rigged sail. Two cogs were used as collateral for investments of £60 5s. 9d. and £62, 10s.[30] The word *lignum* was used to signify a boat of uncertain size. These boats were used as collateral for smaller investments, of 70s., £10, 7 silver bezants, and 810 silver carlinos.[31] Similarly, the word *barcha* referred to a boat of uncertain size. One investment worth 12 silver bezants used the bark as collateral.[32] One ship, labelled as *atzauraus*, was collateral for a £10 investment.[33] Overall, the lack of clear pattern between the value of goods and the collateral suggests that the use of specific items may relate more to the relationship between the parties than the value of the investment or goods. The variety was likely selected based on what the parties had available and the preference of the investing party.

Finally, in three agreements, unfree humans were used as collateral.[34] In 1318, Petrus Amar sold Petrus Gerona a slave named Nichola for £20. In the next contract written in the

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XIII y XIV), (El Albir, 1976), accessed 22 January 2025: https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/7477; 'Auzberg' in Gual Camarena, *Vocabulario,* https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/111391; Alsbergum' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/96681.

[28] ARM, ECR 342, 36r4, 91v5, 111r1, 132v1.

[29] Marcel Pujol i Hamelink, "Medieval Shipbuilding in Catalonia, Spain (13th–15th Centuries): One Principle, Different Processes," *International Journal of Nautical Archaeology* 45, no. 2 (2016), 283–95; Riera, "The Beginnings," 219.

[30] ACM, PRT-14566, 64v; ACM, PRT-14564, 6v1-7r.

[31] AHPB, Pere de Torre 6/2, 151r4-151v, 190v3; ARM, ECR 342, 32v4, 194r1.

[32] ARM, ECR 342, 197v3.

[33] A type of ship, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/71231; Federico Corriente, "Arabismos del catalán y otras voces de origen semítico o medio-oriental," *Estudios de dialectología norteafricana y andalusí* 2 (1997): 25.

[34] ACM, PRT-14540, 11v4-12r; ARM, ECR 342, 32v2; ARM, ECR 345, 23r1-23v.

register, Gerona received £20 for a voyage to Sicily, with Nichola as collateral: 'specialiter obligo dictum neophium que etc.' ('specifically I place the said slave under obligation etc.')[35] As this was hypothecation, rather than 'pignera', possession of the slave would not have changed. Therefore, the labour of the slave was not part of the collateral, as was sometimes the case when humans were used as pledges placed in the possession of the creditor. A similar situation occurred on 9 August 1241, when G. de Valancre received 15 silver bezants from Guillellmus Durandi for a voyage to Palermo or Trapani. Valancre placed 'all the slaves' he was transporting on the ship as collateral: 'obligo tibi specialiter omnis sarracenos quos deffero in dicta navi'.[36] In this agreement, the slaves were goods being transported and so was another example of the goods being traded used as collateral. The humans on this voyage were treated entirely as passive objects, with no phrases dealing with potential issues of their health or the possibility of escaped slaves decreasing the value of the collateral; they were treated as goods, like the fabrics or gems used by others.

The last use of humans as collateral was a little more complex. It appears that Gento de Sarragossa (Zaragoza) and his wife Rahen were previously held in captivity along with their son and daughter by R. Uget. Uget gave permission for the captives Gento and Rahen to travel to the Barbary coast to trade with an investment from R. de Caldos and their son and daughter as collateral:

> 'nec soluerimus tibi […] inpignere super dictos duos filios nostros, Jacob et filia, quos habeas plenum posse vendendi et alienandi sive inpignerandi […] pro his [sic] accendere specialiter obligo dictos ii filios nostros'.[37]
>
> [in the event that we do not pay you […] we pledge to you as collateral our two children, Jacob and the daughter, whom you may have full

[35] ACM, PRT-14540, 11v4-12r.
[36] ARM, ECR 342, 32v2.
[37] ARM, ECR 345, 23r1-23v.

> power to sell or alienate without any further pledging, […] for this, I especially bind our said two children.]

In order for Gento and his wife to have been captives they must have been Muslims or converted Muslims. The use of 'inpignere' and specification that the children could be sold and alienated suggests that the two children remained in Uget's custody and would have continued to be used as labour. The agreement was perhaps a way in which the family was able to buy their freedom, conducting trade for Uget and using their profits to pay for their manumission. Though this is speculation in this specific case, manumission documents often stated that slaves had to 'buy' their freedom through labour.[38] Catlos notes that free Muslims would also indenture themselves to a Christian party as collateral for a loan, using their labour to repay the loan.[39] This contract would demonstrate a specific form of labour in order to buy manumission.

Rather than relying on a form of pledge or collateral, a small group of agreements which were mainly the chartering or sale of a ship, included a specific monetary penalty should the parties default. This varied from the use of specific hypothecation of goods or 'pignera' collateral. Instead, the party agreed to pay a set amount of money as a penalty in the case of nonfeasance. 34 agreements involved a phrase using *sub pena* or similar to set up a penalty for nonfeasance.[40]

24 of these agreements were in *comanda*-type investments which included the chartering or sale of a ship, suggesting that the use of penalties was particularly tied to the use of this valuable possession. The other agreements were a mixture of repayments (3), *comanda* investments (6), or partnership agreements (1). All were between male Christian

[38] E.g. ARM, ECR 342, 193v1, 193v2. See Antoni Ferrer Abárzuza, "Contracts of Talla, from Captivity to Precarious Labour in the Thirteenth and Fourteenth Centuries," *Journal of Medieval Iberian Studies* 13, no. 3 (2021): 331-349.
[39] Brian A. Catlos, *Muslims of Medieval Latin Christendom, c.1050–1614* (Cambridge University Press, 2014), 271.
[40] N.B. *Pena* was an alternative spelling of *poena*, meaning penalty or punishment: "pena", *Logeion*, accessed 11 September 2024. https://logeion.uchicago.edu/pena; "poena", *Logeion,* https://logeion.uchicago.edu/poena.

parties except for two, examined in chapter 7. For example, on 25 October 1256, P. de Deo and P. de Trilia loaned their ship to R. de Molis and G. de Ruppe for a voyage from Mallorca to Soladium[?] to Genoa.[41] The travelling party was responsible for the ship and had to make payment for its use within 20 days after arrival in Genoa. This obligation was under the potential penalty of £40 ('sub pena xl libras'). The shipowners stated that they would fulfil their side of the agreement, providing mariners, servants, anchors, cables, and sails, under penalty of £10 and half the city wall ('x libras regalium […] et alius medietate murus ciuitatis'). The penalties could be paid by either party, creating a shared obligation, rather than making one party beholden to another. Overall, possible future monetary penalties of specific amounts appear infrequently but across the period, unlike the hypothecation of all goods. This suggests that the choice to include the phrase was more reflective of the importance of the ships, or in other contracts unrelated to ships, the individual personal relationship than other social factors.

It was even against the customs of Barcelona to use a penalty. In a complex and extended contract of ship hire, notarised by Jaume Ferrer on 16 May 1349, the shipowner, Bernardus Luppeti, used the ship itself as collateral for the agreement. He had laid out a series of conditions for use, including the various locations to which the ship was to travel and the timeline of the voyage. The merchant chartering the ship, Arnaldus Serra, was to pay £50. Luppeti promised to fulfil the agreement and obligations, under penalty of £100 and used the ship and its equipment as collateral for this potential payment. In order to create this obligation, he renounced the 'custom of Barcelona that prohibits the imposition and payment of a penalty' ('Renunciando specialiter ad hoc consuetudini Barcinonae prohibenti poenam dari et solvi').[42] 13 agreements which included a penalty were written in Barcelona and yet only 2 referenced the custom of Barcelona, with this as the only example of the custom being

[41] ARM, ECR 344, 153v1.
[42] AHPB, Jaume Ferrer 19/5, 93v-94v.

renounced.[43] It may be that the custom was introduced at the end of the period as all other agreements using a penalty were written before this contract.

Pledges and penalties were not included in all agreements, rather presenting a particular choice by parties, possibly the investing party, to seek additional security for their payment and managing the risk involved. This was one of the most commonly used risk-management techniques in the contracts. Pledges and explicitly stated monetary penalties were straightforward methods of ensuring repayment if the venture failed or the travelling party committed a form of fraud. They guaranteed that the investing party would receive their investment back, which would not necessarily require intervention of the court. A choice to include no pledge or penalty suggested that the parties sought a future relationship based on a greater level of trust or relied on other methods to secure their interests.

[43] AHPB, Jaume Ferrer 19/5, 62v-63r, 93v-94v; ARM, ECR 343, 115v4, 278v5; ACM, PRT-14564, 65v-67r, 83v-85r, 111r-111v, 116r2-117r, 121v-122r, 125r-125v, 129v2-130r, 164r, 166v1, 168r-168v; ACM, PRT-14569, 34v-35r; ARM, ECR 342, 82r3, 149v1, 213r1; ARM, ECR 344, 153v1, 179r1; AHPB, Pere de Torre 6/3, 75v-76v, 87v-88r; AHPB, Pere de Torre 6/1, 75r2-75v; ACM, PRT-14566, 102v2-103r; Carme Batlle i Gallart and Elisa Varela Rodríguez, "Las relaciones comerciales de Barcelona con el norte de África (siglo XIII)," *Anales de la Universidad de Alicante. Historia Medieval* 7, (1989): 49-50.

4.3: Guarantors

Like pledges and penalties, the use of a guarantor was a risk-management technique that assured investing parties that their investments would be returned if there was a problem with the trading venture or with the travelling parties. Guarantors were a method with which travelling parties could build confidence in the venture as an investment opportunity.

The choice to use a guarantor, an individual who promised to pay a borrower's debt if the borrower defaulted on their loan obligation to underwrite the agreement presented a particular choice by the parties to involve a third party who could support the contract and relationship. The use of guarantors was less common than hypothecation pledges or the offering of 'pignera' collateral. There are 34 agreements which include a named guarantor, only 2.4% of the set. This does not fit with expected trends in medieval Iberian debt practices; in Furió's study of peasant indebtedness in medieval Valencia, he notes that most loans were not guaranteed by a particular pledge but by the general obligations of assets or a guarantor.[44]

Agreements with guarantors present a particular group of arrangements and relationships. The notary and his document were sometimes not enough to create trust between the parties. Instead, a third named party was required such that the parties could trust the relationship. In Coleman's classification of intermediaries in relationships a guarantor is someone 'trusted by two parties who do not trust each other.'[45] Kosto further classifies various forms of guarantorship or personal surety: the *influencing guarantor*, using forms of persuasion to ensure performance; the *executory guarantor*, forcing performance by seizing surety promised by the debtor; the *amending guarantor*, compensating the creditor for any loss through default; the *paying* or *performing guarantor*, undertaking the action promised by the debtor himself in the result of failure to carry out the action.[46] Though the sort of

[44] Antoni Furió, "Rents Instead of Land: Credit and Peasant Indebtedness in Late Medieval Mediterranean Iberia: The Kingdom of Valencia," *Continuity and Change* 36 (2021): 197.
[45] Forrest, *Trustworthy Men*, 54; Coleman, *Foundations*, 180–85; Hyams, "Faith," 142–43.
[46] Kosto, *Hostages*, 7.

guarantorship being undertaken was not always specified in the documents, most were paying or performing guarantors, providing a material guarantee to the investing party.

An agreement written by Francesch Balle on 13 December 1310 labelled the guarantors as the 'principal payer', demonstrating their role in providing security of payment.[47] Petrus Mora, a citizen of Mallorca and patron of a ship called Saint Christiforus, received an investment from Marcho de Maya for a voyage to Mostaganem in northwest Algeria. Abraham ben Nabet, labelled as a merchant and Jew of Mallorca, was established as guarantor and principal payer for Maya: 'constituo me in praedictis fideuissorem seu principalem solutorem vobis dicto marcho de maya et vestris' ('I establish myself as the guarantor or principal payer for the aforesaid, to you, Marcho de Maya, and yours'). Ben Nabet was to be held responsible for the payment of the freight which was promised to the shipmaster and stated that this meant he was to be responsible for payment of up to £14 8s.[48] The role of guarantor was spelt out unusually clearly in this document, with 'principal payer' meaning default or expected backer. The recipient of the investment, usually the travelling partner, was expected to pay. The guarantor would step in only if they failed to return the amount to the investing partner. As such, the guarantor accepted financial liability for the agreement.[49]

The guarantor added security to the agreement for the investing partner, making it more likely that they would receive their investment back. The word *fideiussor*, used to describe ben Nabet in the above contract, derived from Roman law and had a strong association with financial liability, meaning 'one who commands faith in others.'[50] As such, the inclusion of a guarantor suggests that the investing partner did not have a satisfactory level of confidence or trust in the travelling partner's ability or intention to fulfil the contract. In some forms of agreement the use of guarantors was not the sign of a dysfunctional relationship but

[47] ACM, PRT-14564, 119v2-120r.
[48] Ibid.
[49] Furió, "Rents," 194.
[50] Forrest, *Trustworthy Men*, 54.

part of general practice.[51] However, the infrequency of guarantors in the agreements, making up only 2.4% of the set, instead suggests that these were cases in which the relationship lacked trust.

All but nine of the agreements involving guarantors were written in Mallorca. Of those written in Barcelona, only two were *comanda* investments. The rest were related to service or partnership contracts. The majority of contracts which used guarantors in Mallorca were *comanda* agreements. The value of investments for which men acted as guarantors also varied greatly, from 35s. to £62 10s;[52] these were not all large investments. The Mallorcan contracts suggest that the men involved in these investments required greater risk-management techniques. Perhaps guarantorship was a more established practice in Mallorca; one of the contracts written in Barcelona also included a party labelled as a citizen of Mallorca, suggesting that the parties were influenced by Mallorcan practices.[53]

Guarantors could promise to fulfil the contract rather than repay an investment. A brief contract written on 20 October 1256 included a guarantor called simply Bernardus, who was to complete the agreement if the travelling partners, G. Berengarii and A. Brunnius de Limmos, failed. This provided R. Santua from Sardinia with a guarantee, not necessarily of repayment of his investment of £21 but at least that the contracted actions were more likely to be followed: 'dono vobis fideiussore et complerore et portare Bernardus integrum' ('I give you Bernardus as surety and to complete and carry it all').[54] None of those named in the agreement appear in other contracts in the set. The snapshot provided here suggests that Santua questioned the intention of the travelling parties to fulfil the contract and required additional protection and security, minimising the risk that he would be cheated or lose out from the agreement.

[51] Ibid.
[52] ARM, ECR 342, 116r3; ACM, PRT-14566, 64v.
[53] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 29.
[54] ARM, ECR 344, 145v4.

In late medieval Italy, Botticini suggests that borrowing with a guarantor was considered more favourable than borrowing on pledge and was reserved for 'rich households.'[55] The practices in Barcelona and Mallorca may have been similar, though two agreements contained both the pledge of specific collateral as well as a guarantor suggesting that they were not considered to be mutually exclusive.[56] The people acting as guarantors also did not appear in other contracts, making conclusions about their wealth and social position difficult. Occasionally significant figures did act as guarantors, such as the Bishop of Mallorca ('Fideiussor dominum Episcopum Maiorice'), who was guarantor for Ansaldus Pelter, when receiving an investment of 90s. for trade in Al-Andalus.[57]

In agreements in which more than one person acted as the travelling party, each person did not necessarily have guarantors, suggesting the decision was based on personal reputations rather than agreement type. On 9 April 1240, Petrus Bonaventura and Bernardus de Materono agreed to load animals onto their ship for Petrus Peris, lieutenant of the Mallorcan Prince Pere. They agreed on the price of 80 silver bezants, of which 15 were paid at the time of the contract and the rest on the way back. The agreement ended with Bonaventura stating that he had two guarantors, Petrus Juliol and J. Salaria, who would complete the contract if needed and not contravene it ('Fideiussores pro Petro Bonaventura, Petrus Juliol et J. Salaria, ut hec compleant et attendant et non contraveniant'). Materono on the other hand, had no guarantors, though both men pledged all their property ('obligamus nos, predicti Petrus et Bernardus, omnia bona nostra').[58] Though both men were taking on the same responsibility, only one had guarantors. This suggests that the need for guarantors related to

[55] Maristella Botticini, "A Tale of 'Benevolent' Governments: Private Credit Markets, Public Finance, and the Role of Jewish Lenders in Medieval and Renaissance Italy," *The Journal of Economic History* 60, no. 1 (2000): 178-179.
[56] ARM, ECR 342, 139r1; ACM, PRT-14566, 64v.
[57] ARM, ECR 342, 139v1.
[58] Ibid., 7v3.

the personal reputation of each merchant, rather than the type of trading obligation being made.

The importance of individual personal relationships in decisions to use a guarantor is also made clear in a series of investments received by P. Genover in October 1242. Genover received eight investments form eight different individuals.[59] Each investment was worth between 15s. and 120s. In three agreements he named a guarantor. These were two different men: Petrus Molendinarius acted as his guarantor on a 35s. investment from Bernardus Bulus;[60] B. Poch i Bonus acted as guarantor on an investment of 50s. from Salvator Sutor and 120s. from G. Dunde.[61] Poch i Bonus was also a witness in two of the agreements, one written on the same day as the contract for which he was guarantor and the other written the next day.[62] All but one were for the same voyage to Al-Andalus on the ship of B. de Rubi, while the last was seemingly for a different voyage to Al-Andalus with B. de Sal's ship. The five investments without guarantors were for three lots of 15s., 45s., and 40s. suggesting that the amount of money invested may have been a factor in the decision to use a guarantor; these are relatively lower amounts than the three which used guarantors though the difference is not significant. The only real difference between the agreements was the investing party. It was the personal relationship between these men (no women invested) and Genover which determined whether a guarantor was used.

While guarantors were normally men, presumably with a relationship to the party in debt though this is hard to confirm, there is one agreement which involved a female guarantor who was the wife of the travelling party. On 12 January 1243, F. de Granata took an investment from Sibilie de Rupe (female) for a voyage to Al-Andalus. Repayment of the investment was guaranteed by Berengaria, labelled as the wife of Granata: 'dono fideiusso Berengariam,

[59] Ibid., 115r1, 115r3, 115r4, 115r6, 116r1, 116r2, 116r3, 116v2.
[60] Ibid., 1163.
[61] Ibid., 116r2, 115r3.
[62] Ibid., 116r1, 116v2.

uxorem meam, qui mecum et sine me tibi de praedictis omnibus teneare obligo bona mea Ego Berengaria' ('I give as guarantor Berengaria, my wife, who with me and without me will hold all the aforesaid things to you. I, Berengaria, pledge my goods').[63] While the use of women as guarantors cannot be said to have been normal or common, the role played by Berengaria highlights the central role that wives commonly played in the business dealings of the family without phrases referencing or removing any legal obstacles from their position as holders of property and inheritors. As noted in chapter 1, while women theoretically faced legal obstacles to property ownership and management in Christian Iberia, it was not uncommon for women in Catalonia to own moveable and immoveable property inherited from their parents or husbands, or manage and invest money and their inheritance.[64] Berengaria's position as a guarantor provides an unusual glimpse into the agency that some women held over property in thirteenth-century Catalonia.

Guarantors sought protections for themselves as well, creating documents to ensure that they would be repaid if their services were required. On 25 October 1340, Francesch Balle recorded an agreement between Franciscus de Colle and Arnaldus de Campis, citizens of Mallorca.[65] Campis was recorded as having acted as 'guarantor and intercessor' ('fideiussistis et intercessistis') for Colle in the court of the lord's lieutenant in Mallorca ('in curie [sic] domini locumtenentus [sic] maiorice'), providing surety in relation to 14 quarters of wheat which Colle was to import to Mallorca from the land of Alcena[?] in return for fourteen baskets of figs which were promised by the lord's lieutenant. All the details were recorded as 'contained in the book of the court' ('prout in libro dicte curie hoc lacius continetur').[66]The reason for the creation of the notarial text is therefore not clear, but perhaps represented the beginning of an attempt by Campis to receive repayment from Colle for the debt he had to pay on his

[63] Ibid., 142v2. N.B. Carme Coll Font transcribes the text as 'dono fideiussoris Berengaria, uxor mea' though 'dono fideiusso Berengariam, uxorem meam' appears to be a more accurate transcription: Carme Coll Font, "El Llibre Manual de Pere Romeu," document 1286.
[64] Batlle, "Noticias," 211-212.
[65] ACM, PRT-14564, 90v2-91r.
[66] Ibid.

behalf. The main clause of the agreement simply stated that Colle recognised the role that Campis had undertaken on his behalf in the royal court of Mallorca, providing evidence that guarantors were understood to be legally responsible for the party.

The notarial document created an obligation for Colle to repay the guarantor, Campis, for any losses incurred by the guarantor in his role, without any witnesses or oaths and relying on his word alone:

> 'si racione et occasione dicte fideuissionis et obligacionis aportuisse vos vel vestros aliquid dare vel soluere vel pro inde aliquis missiones facere vel expensas vel dampnum alique seu interesse sustinere totum id quicque et quantum fuerit promito vobis et vestris reddere et restituere indilatum de quibus omnibus credatur vobis vestro solo simplici verbo absque testes et juramento'.[67]
>
> [if by reason and on account of the said suretyship and obligation you or yours should have to pay or perform anything, or if any losses, expenses, damages, or other harm or interest should arise, I promise to refund and restore to you and yours all and whatever it may be, without limitation, trusting you with your simple word alone without witnesses or oath concerning all these matters.]

The contract presents a peculiar relationship between Colle and his guarantor; the guarantor was there to indemnify Colle, but if Colle was simultaneously indemnifying the guarantor, something unusual was going on; in some ways, the two acts cancelled each other out. The timing of the repayments must have been the main concern. Campis was there to pay immediately, perhaps even if Colle was away on business and unable to act on his own behalf. Colle was then required to repay Campis for his actions, perhaps at a later date. The contract was required to maintain the relationship between them after Campis was required to intercede on his behalf in court. Yet the contract also shows the importance of trust and unequal power relations between men in these two positions as the travelling partner was

[67] Ibid.

relying on the word of the guarantor without additional bolsters of witnesses and oaths. Forrest considers the parish representatives known as trustworthy men as 'bridging the gap between personal relationships of trust and institutionally backed guarantees of future behaviour.'[68] The guarantor in this agreement can be seen in a similar manner, guaranteeing future behaviour while at the same time acknowledging the institutionally backed nature of the trusting relationships being formed; with this contract the court would support the return of his money should he have to intercede. In this unusual mutual guarantor relationship, the position of a guarantor was a bridge both between the parties in the contract, acting to increase trust in the personal relationship and to bridge between the personal relationship and the formality of financial liability before the law courts.

Indeed, guarantor relationships could end up in court, using the institutional backing of the Catalan legal system as a risk-management technique. The use of guarantors provided an unambiguous manner for the investing party to receive their investment back should the venture fail or the travelling party commit fraud, which could be, though was not necessarily, carried out through the intervention of the court. An agreement notarised by Francesch Balle on 5 April 1310 demonstrates the use of a guarantor after nonfeasance and the use of the court to enforce the obligations of the guarantor. Vitalis de Roberto received £7 from Arnaldus Begurii in relation to the failure of Jacobus Peregrinii, a sailor, to follow through on his obligation to conduct a trade voyage to Pisa. Begurii had vouched for Peregrinii to Roberto ('quo vos mihi fideiusistis') and was required to pay as Peregrinii had pretended and not gone on the agreed upon voyage ('ipse Jacobus peregrinii et fingiit et non iverit').[69] The repayment was made through the court: 'quod vi et distraccio curie dedistis' ('which you gave by force and pull of the court').[70] The agreement evidences Roberto's engagement with a (presumably) royal court in order to receive repayment from Peregrinii after he failed to use the investment

[68] Forrest, *Trustworthy Men,* 54.
[69] ACM, PRT-14564, 8r2-8v.
[70] Ibid.

as previously agreed. The original investment document is now lost, but the repayment through the guarantor, Begurii, resolved the situation for the investor. The document provides an important example of investors and merchants engaging with the courts and demonstrates the unstable position of a guarantor, who may have been required to present themselves in court due to the actions of a travelling partner. People acting as guarantors had an ambiguous status vis-a-vis institutions, as a part of the formation of personal relationships between the parties and as a direct link to actions in court.

Overall, the documents show that notaries and notarial contracts were used not only (or even not mainly) to create evidence that could be used in court, but to build the relationships that would keep an agreement *out* of court. Guarantors, as well as pledges and monetary penalties, provided a clear path for investors to recover their investment, either separate to or using the court structures. These risk-management techniques invited the investing party to place greater confidence in the investment, providing straightforward forms of security. These techniques came in the form of a variety of hypothecated goods, pledged collateral, penalties of sums of money for nonfeasance, and the use of guarantors. Each provided additional guarantees to relationships between travelling and investing parties, by building added confidence in the relationship and insurances of recovery in the case of problems or failure. Guarantorships also placed individuals in potentially unstable positions, used to increase the standing of travelling parties by lending weight to their reputation, and yet possibly called upon to attend court and pay when the travelling party failed to fulfil a contract. The use of pledges, penalties, and guarantors additionally suggests that the personal relationships between the central parties of the contracts required methods to strengthen trust, by inviting greater confidence, which the notarial contract alone could not satisfy. These techniques managed the future expectations of the investing party using extra-personal methods to build confidence and provide security in the future. The notarial contracts show that risk-management techniques, in the form of pledges, monetary penalties, and guarantors,

carried out varied trust work as a part of these contracts, which built relationships, though were not enough alone.

Chapter 5 – Character management: a spectrum of promise and faith language

5.1: Introduction- law courts, language choices, and trust talk

Each notarial agreement formed a set of obligations and promises, whether implied or explicit. As we have seen, Catalan notaries were trained in the law at universities or through apprenticeship and their documents were legally enforceable contracts. Various clearly legally enforceable obligations were included in agreements written for merchants and investors, labelled here as action promises. However, the agreements also contained complex promises, which were more difficult or indeed impossible to legally enforce, here labelled as disposition promises. While strictly enforceable action promises formed a part of every contract, disposition promises were included in a large proportion of agreements. These promises changed the nature of the relationship between the parties. This chapter explores these changes, considering the strength of obligations, how they mitigated risks, and the unequal power relations that were produced. Varied trust talk was used to build trusting relationships which suited their purposes, creating different positions of power and responsibility.

The legal enforceability of contracts did not mean that trust was absent in these relationships. While contractual safeguards and potential penalties reduced the perceived risk, they did not reduce the need for trust. As Cook and Santana argue, contracts cannot 'encompass every contingency in the relationship'; trust was a central part of transactions.[1] Forrest, too, argues that in the making of promises, trust and the law worked together, as even 'legal enforcement of obligations and rights was underpinned by trust', such as trust in

[1] Cook and Santana, "Rational Choice," 260.

witnesses, the courts, and written documents.[2] Promises of all kinds were underpinned by trust in the law and trust in the notarial practice.

Similarly, the language of 'faith' and oaths changed the nature of promises, adding dispositional qualities to more straightforward action obligations and complicating character-management work in contracts. Merchants used a range of promise and 'faith' behaviours, as well as references to lawful and honest behaviour, to set expectations for the future of the relationship, using character-management techniques to do the trust work required for each individual agreement.

This chapter first considers whether and how obligations were considered legally enforceable in medieval law, before moving to examine how the language of lawfulness and the courts were used in the contracts to manage expectations of future behaviour. The ways in which merchants used courts and legal procedures has been a common focus of historical investigation. It is often argued that merchants sought to avoid taking cases to court to avoid lengthy and costly court proceedings.[3] Greif, for example, argued that legal guarantees were unusable and unused as Geniza merchants did not want to and could not rely on public institutions.[4] One way in which parties minimised the chance that they had to turn to court was the use of character-management language. The chapter then turns to explicit promises, using the concept of action and disposition promises to separate the various implications of explicit promise-making on the formation of trust. The importance of truth, honesty, and

[2] Forrest, *Trustworthy Men*, 35.
[3] Jessica L. Goldberg, "Choosing and Enforcing Business Relationships in the Eleventh-Century Mediterranean: Reassessing the 'Maghribi Traders'," *Past & Present* 216, no. 1 (2012): 29. On the lengthy procedures in court for Geniza merchants: S.D. Goitein, *A Mediterranean Society: the Jewish Communities of the Arab World As Portrayed In the Documents of the Cairo Geniza*, vol. 2, (University of California Press, 1967), 334–45. For the relationship between reputation and legal embroilment in the Geniza: Goitein, *Mediterranean Society*, vol. 5, 191–214.
[4] Avner Greif, "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition," *The American Economic Review* 83, no. 3 (1993): 529; Greif, *Institutions*, 63-64. See also, Edwards and Ogivlie, "Contract Enforcement."

reliable behaviour (including faithfulness) is then examined before looking at the use of oaths in the documents.

5.2: Lawful behaviour and the law courts

Notarial contracts were created within the expectations of the law.[5] They contained phrases which both activated parts of the law and conformed to its expectations. Such phrases made obligations in the agreements legally enforceable and allowed parties to use the threat of the law courts as a response to both nonfeasance and malfeasance. Reyerson and Salata note that in Roman and medieval law, oral contracts were legally binding, meaning that notarial records were a 'convenient means of proof' especially when proof might be required in the future; 'the notary's instruments […were] proof of the validity of a contract and could be used as such in a court of law.'[6] As noted in chapter 2, notarial contracts were legal instruments centred around the concept of legal enforceability, as lasting documents, with public faith placed on them. In order to understand how concepts of lawfulness and promises functioned in the set, medieval understandings of the enforceability of obligations need to be considered, asking, were all obligations considered to be legally enforceable?

Legally enforceable phrases were a key part of the agreements; they used the language and law of the *ius commune.* Instead of considering when, in principle, a contract was binding, jurists discussed ideas of consent, promise, and agreement, alongside mistake, fraud, and duress as defences against enforcement.[7] The Roman jurist Gaius classified contracts according to when they became binding. Sale, lease, partnership, and agency all became binding at the moment the parties consented; he labelled these contracts *consensus*. Loans, bailments and pledges became binding upon delivery of the thing loaned, bailed, or pledged – these were contracts *re.* His third category was contracts by words (*verbis*) or by writing (*literis*) which became binding according to a certain formality. A contract by words was made through a formality, labelled a *stipulation,* in which a party asked the other 'do you

[5] For a discussion in non-Iberian contexts: Anthony Musson, ed., *Expectations of the law in the Middle Ages,* (Boydell Press, 2001).
[6] Reyerson and Salata, *Medieval Notaries*, 21.
[7] Gordley, *Philosophical Origins*, 32.

promise X?' and was answered 'I do promise X.' The contract was then written into an account book.[8]

The medieval glossators, predecessors of the commentators, created terminological clarity in their examination of agreements, using *pactum* as a general term 'comprising all agreements between two or more parties aimed at creating obligations.'[9] They attempted to create a coherent system of contract and obligation from the material in Justinian's *Digest* with categories based on questions of natural obligations, making a contract *pacta vesita* (legally enforceable) or *pacta nuda* (not binding).[10] However, Zimmerman states that 'already by the end of the Middle Ages, every informal agreement had, for all *practical* purposes, become legally binding' with the development of mercantile law which increased the range of what was considered enforceable.[11] Swain too argues that the division was more important in theoretical discussions than in practice.[12] Indeed, Gordley argues that while many medieval jurists considered that consent was central to the binding nature of a contract and found promises to be binding, the classical distinction between nominate (legally enforceable) and innominate contracts was upheld only in discussions of Roman law and were not considered important in practice.[13] Late scholastics, he argues, influenced by Aristotelian thinking, believed that 'all promises were binding by virtue of fidelity.'[14] Aquinas (1225-1274) viewed promise-keeping as a matter of morality and as an obligation created by natural law. Similarly, the Italian canonist Hostiensis, Henry of Segusio (c.1200-1271), wrote that promises should always be kept, unless they were contrary to law, good morality, or were impossible to honour.[15]

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[8] Ibid. 31.
[9] Zimmermann, *Law*, 538.
[10] Warren Swain, "Contract as Promise: The Role of Promising in the Law of Contract. An Historical Account," *The Edinburgh Law Review* 17, no. 1, (2013): 6; Zimmermann, *Law*, 538-539.
[11] Zimmermann, *Law*, 540.
[12] Swain, "Contract," 6.
[13] Gordley, *Philosophical Origins*, 41.
[14] Ibid., 45.
[15] Swain, "Contract," 12; Forrest, *Trustworthy Men*, 37.

Kèotz also argues that medieval merchants were disregarding the Roman law concept that a *nudum pactum* was unenforceable, instead following the canon law view which treated all promises as valid and creating a moral obligation.[16] There was evidence in the *ius commune* to support the enforceability of all contracts. The *Decretals of Gregory XI* stated in 1234 that 'pacta quantumcunque nuda servanda sunt' ('pacts, however *naked*, must be kept') and it was considered sinful to break a promise according to canon law.[17] Even in 2.3.29 of Justinian's *Code,* we find the statement that 'sancimus nemini licere adversus pacta sua venire et contrahentes decipere' ('we shall not allow anyone to contravene his agreements and thereby disappoint/deceive his contractor').[18]

Somewhat standardised legally enforceable phrases were frequently used in the contracts. Reyerson and Salata suggest that notaries would have had 'a rote knowledge' of legal formulas, such as phrases to guarantee contracts or create exemptions from legal prosecution. They argue that notaries were employed to interpret the 'legal technicalities of the contracts for their clients' who may have been illiterate and may not have understood Latin. [19] This could suggest that much of the contractual language would have been automatically included by the notaries who wrote the contracts, without putting thought into what was to be written or not. However, the contracts varied, including different legal phrases to support the creation of particular relationships. As well as being experts in law, notaries were experts in relationship-building.

The contracts were written within the context and framework of the *ius commune*. A small group directly referenced this body of law, defining the contracts under a wide European

[16] Hein Kèotz, *European Contract Law*, trans. Gill Mertens and Tony Weir. Second edition. (Oxford University Press, 2017), 49-51; Forrest, *Trustworthy Men*, 43-44.
[17] "DECRETALIUM D. GREGORII PAPAE IX. COMPILATIO," *The Latin Library*, accessed 11 September 2024, https://www.thelatinlibrary.com/gregdecretals1.html: 1.35.1.2; Swain, "Contract," 6; Gordley, *Philosophical Origins*, 41.
[18] Justinian I, and Paul Krueger, *Corpus iuris civilis. Vol. 2, Codex Iustinianus*, (Weidmannos, 1877), 94; William W. Park and Alexander A. Yanos, "Treaty Obligations and National Law: Emerging Conflicts in International Arbitration," *The Hastings law Journal* 58, no. 2 (2006).
[19] Reyerson and Salata, *Medieval Notaries*, 10.

standard, rather than following local customs. 142 agreements refer to the contract being 'ad usum gentium' ('according to the custom of nations'). While the phrase 'ius gentium' was common in much of Western Europe, here we have 'usum' used instead. *Usus* related more to practice and custom than *ius* which meant justice and law.[20] The 'ius gentium' was a term which designated the law regulating relations between polities and therefore acted to express common precepts that governed agreements between people from different locales.[21] None of these 142 agreements using 'ad usum gentium' occurs without *usum maris* ('according to the customs of the sea'). 'ad usum gentium' only started to be used in Barcelonan contracts in 1316 and Mallorcan contracts from 1310. This may reflect the growing influence of the *ius commune,* as more parties specified their desire for contracts to be held to the 'international' standard.

380 agreements refer to the contract being 'ad usum maris'. These were written in both Barcelona and Mallorca and can be found across the period. In *ius commune,* the sea was considered to be common to everyone ('*commune omnium*'), open to use by all, owned by no one. However, this use could be defined by custom as polities claimed overlapping jurisdictions.[22] The choice to define the contract by the wider 'customs of the sea' placed the legal basis for the relationships outside the local law of the Iberian Peninsula; many *fueros* were concerned with maritime activity.[23] Green speaks of a 'customary law of the sea' known and adhered to throughout the Mediterranean. Kelleher refers to a 'wide-spread maritime custom' of legitimate reprisals for merchants and shipowners who suffered attacks by pirates. For both, the *Llibre del consolat de mar* (Book of the Consulate of the Sea, compiled through the thirteenth and fourteenth centuries) in Barcelona was the recording of this pre-existing

[20] Gialdroni, "Propter Conversationem Diversarum Gentium." Also Kinji Akashi, *Cornelius van Bynkershoek: His Role in the History of International Law*, (Brill, 1998), 34-42.
[21] Dante Fedele, *The Medieval Foundations of International Law: Baldus de Ubaldis (1327-1400), Doctrine and Practice of the Ius Gentium*, (Brill Nijhoff, Koninklijke Brill NV, 2021), 10.
[22] Ibid., 247, 254-256, 259; Percy Thomas Fenn, Jr., "Justinian and the Freedom of the Sea," *The American Journal of International Law* 19, no. 4, (1925).
[23] Jennifer L. Green, "The Development of Maritime Law in Medieval Spain: The Case of Castile and the Siete Partidas," *The Historian* 58, no. 3 (1996): 577.

code.[24] While the *ius commune* was growing in importance, even the *Corpus Iuris Civilis* recognized custom (*usus*) as a source of law.[25] Kelleher reminds us that Catalan jurists followed a similar legal philosophy, writing the *usatges* (usages) of law so that in the twelfth century the Catalan counties accepted customary practice as a basis for official administration of justice. The first *Usatges de Barcelona* were compiled by Ramon Berenguer I, Count of Barcelona (1035–1076) to repair the deficiencies of Gothic law.[26]

French documents written 1000-1200 contained similar phrases, referring to general custom (*secundum consuetudinem patrie generalem*) or the usages and customs (*ad usus et consuetudines*) of a certain territory.[27] McHaffie argues that such phrases took on meaning in 'a context of growing legal professionalism'.[28] This may explain why *usum maris* and *usum gentium* together only appeared in later contracts; as *ius commune* became more widespread, it was used more often. In a contract written by Pere de Torre on 7 August 1314 for P. Busticins de Castro de Gratiata and the brothers Bonanato and A. de Casalibus, the phrase 'ad usum maris' was crossed out (see Figure 5.1).[29] The application and then removal of the customs of the sea would have changed the nature of the agreement, perhaps so that the local customs of Barcelona and Catalonia would have been applied in the case of later appearance in court if a dispute needed to be settled. A decision to change the legal basis of the contract explains the change in the written register.

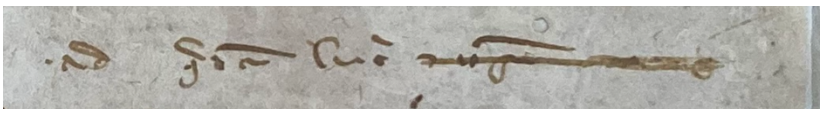


Figure 5.1: Detail in AHPB, Pere de Torre 6/1, 100r1, showing the crossing out of 'et usum maris': 'ad quartum lucri ~~et usum maris~~.'

[24] Ibid., 575-578; Marie A. Kelleher, "'The *Sea of Our City*': Famine, Piracy, and Urban Sovereignty in Late Medieval Barcelona," *Mediterranean Studies* 24, No. 1 (2016): 6, 8.
[25] Marie A. Kelleher, "Boundaries of Law: Code and Custom in the Legal Practice of Early Medieval Catalonia," *Comitatus* 30, no. 1 (1999): 8.
[26] Kelleher, "Boundaries of Law," 8-9.
[27] McHaffie, *Warranty Obligations*, 36.
[28] Ibid., 38.
[29] AHPB, Pere de Torre 6/1, 100r1.

In one *comanda* investment, one partnership, two ship loans and two service agreements, parties instead chose to refer to the customs of Barcelona.[30] On 29 December 1259, Sanxo de Service paid 1000s. to B. de Tervaria and P. de Massaneto on behalf of B. de Villare in order to release Villare from his position as a pledge for his uncle Ato de Foxano. He promised to repay Service through providing him with service on the Barbary coast.[31] Service agreed to provide sustenance and clothing while Villare worked for him, which he would later repay. Villare swore homage to Service, and then agreed that if he broke the agreement or any part of it he was to be handed over to the court and custom of Aragon and Barcelona, following Catalan customs ('si frangerem hoc vel aliquo ex praedictis quod remannam ante traditor ad forum et consuetudinem Aragonem et barchinone ad forum et consuetudinem cataloniem).

Beyond deciding on a body of custom to rely upon, parties used the institution of the courts as risk-management in the formation of their relationships by emphasising the legally-binding nature of the documents. Some agreements used language which was unnecessary in legal terms but which emphasised the need for parties to act according to the law. As legally-binding documents, the large majority did not include phrases which emphasised the legally-binding nature of the documents. 18 contracts included the term *licite,* defined as permitted by law or custom.[32] None of these contracts was between parties of different religious groups or female parties. 164 contracts used the term *legalis,* meaning legal or

[30] ARM, ECR 345, 119v, 120r1; AHPB, Jaume Ferrer 19/3, 95v; AHPB, Jaume Ferrer 19/5, 93v-94v; AHPB, Pere de Torre 6/1, 100v2-101r; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 12.

[31] ARM, ECR 345, 120r1.

[32] "licet", *Database of Latin Dictionaries*, accessed 11 September 2024, https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=Licitus&dict=LS&article=k1nb%2blW2Yz9YoQwedFylnA%3d%3d; "licitus," *Database of Latin Dictionaries, https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=Licitus&dict=BE&article=dbm1zbuQ%2f%2fE%3d*

belonging to the law.[33] 72 contracts used the term *legaliter*, according to law or legally.[34] Du Cange and Nebrija additionally define *legaliter* as loyally, or faithfully, stating that it is equivalent to *fideliter* (faithfully – a term explored in section 5.3).[35]

Legaliter was most commonly used as part of a promise by the traveling party to engage in trade. For example, on 8 June 1242 in Mallorca, Bernardus Gerr de Sancto Petrus Auri received an investment of £13 in the form of fabrics and silver bezants from Raimundus de Clerico for a voyage to Al-Andalus. Auri agreed to sell these invested goods there, at a price which he would lawfully decide ('que omnia Implicamenta convenio illuc vendere et precium quod me hunc legaliter implicare').[36] It was not strictly necessary for Auri to state that he would sell the goods in a lawful manner. In a similar agreement, Berengarius Codoyn received 18 quintals of wheat worth 18s. from B. Sutri de Silva to be traded in Eivissa (Ibiza in English). Codoyn agreed to sell the goods there and return ('convenio illuc vendere et implicare et reducere') without using the word *legaliter*.[37] This agreement was written in Mallorca on 2 March 1243. The decision to include the term *legaliter* in only a minority of documents, in both Barcelona and Mallorca across the period, suggests that it was selected by the parties, or perhaps the travelling partner, rather than being notarial standard practice.

Rather than playing a central part in creating a legally-binding document, the inclusion of terms such as *legaliter* added an additional level of reassurance of the lawful behaviour of

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[33] "legalis," *Database of Latin Dictionaries*, *https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=legaliter&dict=LS&article=dbm1zbuQ%2f%2fE%3d*

[34] "legalis" *Database of Latin Dictionaries*, https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=legaliter&dict=LS&article=dbm1zbuQ%2f%2fE%3d; "legaliter," *Database of Latin Dictionaries,* https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=legaliter&dict=AY&article=dbm1zbuQ%2f%2fE%3d.

[35] "legaliter," *Database of Latin Dictionaries,* https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=legaliter&dict=DC&article=XbQRCaFAUMTtJsXPLfkxog%3d%3d, https://clt-brepolis-net.ezproxy-prd.bodleian.ox.ac.uk/dld/Dictionaries/Search?field=HEAD&query=legaliter&dict=NE&article=dbm1zbuQ%2f%2fE%3d

[36] ARM, ECR 342, 83v5.

[37] Ibid., 164r3-164v.

parties. This was inclusion of a phrase completely unnecessary in legal terms: to say you will act lawfully was to assert the most basic expectation of a legally-enforceable contract. Reyerson and Salata state that there is no known instance of the use of a notarial register in a court of law, despite the fact that the notary's register was considered an adequate proof of contractual obligations.[38] Rather than pre-empting litigation, these terms increased the document's trust work in building a functional relationship between the parties. They emphasised the need for the travelling party to behave lawfully, expressing a concern for the intentions of the party conducting the trade.

Protections against fraud also came in the form of renunciations of rights or legal exceptions, demonstrating a concern for the future behaviour of parties. Renunciations allowed parties to protect themselves from fraud or deceit or from a specific exception by which a party could, at a later date, try to nullify the contract. These anticipated exceptions could come from any source of law whether canon or civil law or local customs.[39] The most common renunciation in the agreements referred to a possible future complaint by the travelling party that the investing party had not returned their full investment, claiming fraud on money which was never handed over. For example, on 7 June 1277, Bernardus Poncii and Berengaronus Venrelli received £43 and 12s. from Berengarius de Adarrono for trade in Alexandria. The travelling party who received the investment renounced the exception of money not counted and any investment not received and fraud ('renunciantes excepcioni peccunie non numerate et comande non recepte ac doli').[40]

Originating in the *Code*, 4, 30 (*De non numerata pecunia*) in which a vendor could end a sale on the grounds that the payment had not yet been delivered, a complaint or exception of money not paid (*querela* or *exceptio non numerate pecuniae*) was a protection for the debtor in cases where the creditor sued for money which had not been lent or had been given

[38] Reyerson and Salata, *Medieval Notaries*, 23.
[39] McHaffie, *Warranty Obligations*, 35.
[40] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 41.

to the debtor in part. This was a protection in Civil Law for those who signed for larger sums than were actually received.[41] As such, the renunciation of this complaint or issue, meant that it could not be raised later, preventing the debtor, or travelling partner, from making a future case of fraud against the creditor, or investing party. As Riesenberg notes, the renunciation clause 'attacks a protection against fraud'.[42] This was therefore an expression of trust, between unequal parties, as the travelling partner was renouncing the possibility of claiming fraud in the courts at a later point.

Renunciation clauses have received some attention from scholars, though not for their impact on trust. McHaffie sees renunciation clauses as evidence of 'the influence of Roman legal language and ideas' becoming particularly common after 1250.[43] Riesenberg suggests that the frequency of renunciations in notarial acts from 1150 shows that the business economy required a legal system which reduced restraints on freedom of contract. The renunciations were a 'legal means chosen by enterprisers who were impatient of the restraints upon liberty of contract' and an attempt to encourage greater levels of trade through the loosening of the rules of 'contractual good conduct'.[44] North, too, argues that merchant law developed 'because common law interfered with trade' leading to exceptions and renunciations.[45] While the documents cannot speak to the origins of the phrase, its use shows that, as well as changes to notarial practice over time, there were varied levels of concern between the parties in relation to the potential for fraud. Those who chose to include the renunciation of the exception of money not paid were stating that they would not engage with courts over this legal principle; they would not accuse the investing party of fraud, and instead, trust in a positive future relationship. Similarly, while past scholars like Giry and Boüard have argued that renunciation clauses were included by notaries to pad out the text in order to

[41] McHaffie, *Warranty Obligations*, 35; Riesenberg, "Roman Law," 210; Reyerson, "Rituals," 100.
[42] Riesenberg, "Roman Law," 207.
[43] McHaffie, *Warranty Obligations*, 34.
[44] Riesenberg, "Roman Law," 214.
[45] North, *Institutions*, 129.

charge more for their services, or written into contracts without thought as boiler-plate additions, current thinking supports the idea that parties did not 'haphazardly cite' renunciations; they were not meaningless padding but 'necessary to ensure individual contractual freedom.'[46]

The use of renunciations in the set supports the idea that they were purposefully and not automatically included by notaries. 502 agreements (35%) contain the *exceptio non numerate pecuniae* renunciation, or an abbreviation of it. The vast majority of agreements involved the payment of money or goods, making the lack of the renunciation in most important; it suggests that many parties retained the option of a future complaint. This was not a phrase that was automatically included when payments were made but a decision by the parties and notary. The renunciation was used across the period in both Mallorca and Barcelona in a minority of agreements.

Despite their seemingly mundane nature, even the most juridical of phrases might have been used to create a particular relationship. Following the thinking in chapter 2, that everything included in the agreements was intentional and had a purpose, then the choice not to include a renunciation phrase to remove a legal protection, suggests that the travelling party felt the need to protect themselves from the possibility of the investing party reclaiming more money or goods than were originally invested. These relationships were constructed with a particular concern for a risk which notarial practice could help to ameliorate.

Some agreements included utterances that a party would not deceive or commit fraud using the language of exceptions and renunciations. The renunciation of *exceptiones doli vel metus causa* ('exceptions on the grounds of deceit or duress') was similarly intended to prevent individuals claiming to be victims of fraud and duress.[47] Likewise, others renounced

[46] Arthur Giry, *Manuel de diplomatique*, (Hachette, 1894), 560ff; Alain de Boüard, *Manuel de diplomatique française et pontificale* (A. Picard, 1929-48), 285-90; Riesenberg, "Roman Law," 208, 224; Reyerson and Salata, *Medieval Notaries*, 25.
[47] Riesenberg, "Roman Law," 210.

evil tricks: 'renunciantes […] doli mali' ('renouncing evil tricks'). A version of these phrases occurred 244 times (17% of the set). In other cases, the phrase was introduced by a promise of some form. This occurred 67 times (4.7% of the set). For example, on 15 July 1316, Petrus Just stated that he had prepared his ship to take the goods of Jacobus de Porio and Petrus de Plano from Barcelona to Aigues-Mortes in order to load goods, then to Cyprus to unload. Just promised that he would fulfil each of the things stated in the contract, in good faith and without any deceit or fraud: 'omnia supradicta et singula promito ego dictis P Just accedere et complere vobis dictis mercatoribus bona fide et sine aliquo dolo et fraude' ('all these aforementioned things and each of them, I promise, I, the said P. Just, to accept and fulfil for you, the said merchants, in good faith and without any deceit or fraud').[48] All three men were labelled as citizens of Barcelona, but the relationship between them nevertheless required an additional promise not to commit deceit or fraud. These were two distinct phrases brought together as one promise; one promise not to deceive the other party as a part of the transaction, and one promise that the party will not claim to have been a victim of fraud after the actions of the agreement have taken place. One referred to the behaviour of the travelling party during the business, the other looked to the future and the end of the transaction.

A promise not to break the law in a legally-binding document through deception or fraud was not necessary but added an extra layer guaranteeing the performance of the agreed action in a certain manner. The desired future behaviour of the parties was explicitly added into the words of the text even though an obligation not to break the agreement or to lie was implicit in the creation of the text itself. In Just's agreement with Porio and Plano there was an obligation to carry out these agreements in a legal manner, an implicit promise not to act in a fraudulent manner.[49] A wider promise not to commit fraud or deceit in relation to the action was essentially a promise to obey the law, theoretically lessening the possibility of

[48] AHPB, Pere de Torre 6/2, 141r2-141v.
[49] Ibid.

litigation later in the relationship and expressing a desire to keep the business out of court. These phrases increased the level of trust work done by the document. While renunciations of fraud were not standard, it should be noted that it appears in 120 of the notary Francesch Balle's 140 agreements in the set (85.7%), suggesting that the notary had a large amount of influence as to whether the phrase was included in his agreements.

Gender did not appear to affect whether renunciations of fraud or deceit were included in a contract. There are 213 agreements (14.9% of the whole set) which included a form of agreement or promise not to commit fraud. 24 (11.3% of 213) of these involved a cross-gender relationship. 127 agreements in the total set included cross-gender relationships (see Table 5.1):

Female participation in contracts	**Number of documents[50]**
Female party contracting with male party	103
Female party contracting with male party, including a female guarantor	1
Female and male co-party with a male contracting with male party	17
Female and male co-party contracting with female and male co-party	1
Female party in cancellation note. Main document contains male contracting parties	1
Female Jewish party contracting with Jewish party	1
Female co-party with male Jewish party (presumed), contracting with Christian party, with Jewish witness	1
Muslim male and Muslim female co-party contracting with Christian party	1
Muslim party contracting with female Christian party	1
TOTAL	127

Table 5.1: Number of agreements including female participation.

As explored in chapter 1, Kramer, Cook *et al.,* and Tropp have suggested that intergroup relationships were less secure and therefore inter-gender relationships required a greater level

[50] For references to each contract, see Table 1.1.

of documentary trust work.[51] Given that the inclusion of a promise or agreement not to commit fraud in the agreements can be seen as a way in which parties added assurances to the relationship, aiming to avoid later litigation, the traditional view would expect more agreements with inter-gender relationships to include the phrase. This would mean that a larger proportion of the 127 inter-gender documents would include the phrase than the whole set. However, only 24 of the inter-gender documents included an agreement not to commit fraud (18.9% of all cross-gender documents), compared to the 213 agreements in the whole set (14.9% of the whole set). This shows that inter-gender documents include the phrase only slightly more often than agreements between men; the gender of parties did not particularly affect whether the phrase was included. This suggests that there was a more significant factor affecting the promise not to commit fraud or deceit in the relationships than gender.

Similarly, as outlined in chapter 1, following the work of Hunt and Murray, and Stuard, it is not unreasonable to suggest that agreements between parties with familial connections would seek to create future relationships with greater levels of trust than those between strangers, requiring less trust work.[52] As a result, we would not expect to find promises not to deceive or commit fraud in agreements between family members. 27 agreements included a family connection between parties on opposite sides of a contract. In this smaller group of documents, only eight contracts (29.6% of the 27 agreements) used an agreement not to commit fraud. When compared to occurrence of the phrase in all agreements (213 agreements in the whole set, 14.9%) we can see that they occurred significantly more often. Therefore, familial connections did not necessarily mean greater trust. That many contracts between family members included a promise not to deceive or commit fraud suggests that pre-existing trust could not always be relied upon. Trust required active attention within families.

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[51] Kramer, "Ingroup-Outgroup Trust," 95-116; Cook et al., "Introduction," 1-14; Tropp, "Intergroup Contact," 93.
[52] Hunt and Murray, *History of Business*, 32-33; Stuard, "Legal Services," 276.

An analysis of the use of renunciations of the exception to count money also shows that familial connections were not necessarily a sufficient basis for trust. As expressions of intended relationships based on heightened trust, removing legal protections for the travelling party, we might expect a greater number of contracts between family to use the phrase and fewer contracts involving female parties. Indeed, 15 out of 27 contracts (55.6%) involving family relations included such a renunciation, compared to 502 agreements in the total set (35%). 45 contracts which included the renunciations of the exception to count money involved solo female parties, 40.5% of the 111 contracts with solo female parties. Rather than fewer contracts, more solo female parties included the renunciation, a sign of trust; occurrences of the *exceptio non numerate pecuniae* renunciation support the view that women were not treated differently to men in the contracts.

Some contracts using the renunciation involved female parties and familial relationships. One contract written by Francesch Balle on 21 March 1340, involved a son, Bartholomeus Cortessi, who received an investment from his mother, Philipa Cortessi, for a voyage to Flanders.[53] The renunciation removed protections for Bartholomeus from any claims by Philipa to be owed more money than was paid. Philipa was taking on a particular role in the law, acting as guardian and administrator ('regenti et administrati') of the property of Bartholomeus, and his brother, John, and sister, Anne.[54] The removal of protection of the son against fraud committed by his guardian set up a future relationship based on trusting behaviour. The family does not appear in any other documents making further consideration of the personal relationships at play in the document difficult.

The contracts of Barcelona and Mallorca present little concern about the capacity for women to conduct business themselves or on behalf of others. Reyerson and Salata state that women had legal protections which prevented them from assuming liability for another's

[53] ACM, PRT-14564, 165v2-166r.
[54] Ibid.

debt, (called '*senatus consultum Velleianum*'). As a result, to operate in mercantile documents, they needed to renounce these protections. The renunciation gave them the ability to manage business themselves and on behalf of others.[55] Despite the theoretical need for women to renounce legal protections to act in these business situations, no documents in the set reference either the protection or its renunciation. This absence may be an extension of the tendency for women to represent themselves in court in southern Europe, supporting Batlle's claim that married women in Catalonia had the ability to manage and invest property, with or without their husbands.[56] Nevertheless, Reyerson and Salata's study explores the work of Jean Holanie, a notary of Montpellier, part of the lands of the Crown of Aragon from 1204, though the marriage of Peter II of Aragon and Marie of Montpellier, until 1349. The lack of reference to the *senatus consultum Velleianum* protection in Barcelonan and Mallorcan acts suggests that even within the Crown of Aragon, women were considered variously in relation to the law.

As the presence of renunciation phrases was neither essential nor constant, their inclusion cannot be understood as simple, boiler-plate legalese, as Giry and Boüard argue.[57] Rather, it suggests a concern that a party might use a legal exception or jurisdiction to later disregard the contract.[58] Parties chose to rely on the law to a greater or lesser extent in the formation of relationships. The presence of family connections and gender differences, which have traditionally been considered to affect trusting relationships in opposing ways, with family connections supposed to exhibit greater trust and gender differences to exhibit less, did not clearly affect the choice to remove a legal protection in the form of a renunciation. Both contracts with familial and inter-gender relationships included the phrase more often than agreements between non-related men.

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[55] Reyerson and Salata, *Medieval Notaries*, 25; Riesenberg, "Roman Law," 209; Kelleher, "Later Medieval Law," 139.
[56] Reyerson and Salata, *Medieval Notaries*, 26; Batlle, "Noticias," 212.
[57] Giry, *Manuel de diplomatique*, 560ff; Boüard, *Manuel de diplomatique*, 285-90.
[58] McHaffie, *Warranty Obligations*, 35.

There were other ways in which parties could expressly agree not to commit fraud or deception. These phrases expressed the desire to keep the relationship out of court in the future and for honest behaviour. On 2 August 1239, Guillelmus Mercerii and Petrus de Quadris formed a partnership worth 600s. for trade across land and sea.[59] They made a promise to use the capital for trading purposes without deceit: 'sine omni enganno […] promitit […] tractare et emerchari in rebus et mercimoniis in quibus lucrari possimus' ('without any deception, [each of us] promises, [to] handle and trade in goods and merchandise in which we can make a profit'). The partnership was to last as long as it pleased both men and no longer ('siquidem societas duret quamdiu quilibet nostrurn placuerit, et non amplius'). Similarly, on 27 February 1316, Arnaldus de Corniliano, Guillelmus de Costabella, Bernardus Maciani, and Bernardus de Malvino formed a partnership worth £50, after investing £550 to prepare the ship, for trade in the Byzantine empire. The four partners swore by God to each other that they would carry out the partnership without any deceit or fraud ('Juramus omnes per Deum […] sine aliquo dolo et fraude') or contravening the agreement by any right, cause of reason ('non contraveniamus aliquo jure, causa vel ratione').[60] The men also renounced the exception of money that was not counted and the ship which was not valued or placed in the partnership. All these phrases expressed the desire for the partners to keep their relationship out of court in the future, promising no deception, swearing not to contravene the agreement, and renouncing the protection of the courts in relation to the amount invested. These agreements built relationships based on shared trust and confidence rather than support of the legal system.

A minority of contracts went beyond agreements of honesty or lack of fraud, explicitly promising not to take a complaint to court. 49 contracts in the set (3.4%) involved a promise not to involve the court. In 1349, B. Lambert, a citizen of Valencia, received an investment of £60 from Bernardus Vola, a citizen of Mallorca, for a voyage from Mallorca to Alcoi (south of

[59] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 5.
[60] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 22; AHPB, Pere de Torre, llig. 2, any 1315–1316.

Valencia). Lambert promised to repay Vola without taking damage or loss to the investor or any complaint to the court in relation to the payment ('Promitto […] reddere […] hoc sine omni dampno et missione vestri et vestrorum, ac querelam curie').[61] The statement may speak to a concern of being held to account for more money than was originally invested. However, it instead seems that the debtor (travelling party) was promising that they would not give the creditor (investing party) a reason to go to court.

The promise provided Vola with a great deal of power over the travelling party, Lambert, either removing the intercession of the courts as a possible response to any overclaims by Vola or placing Lambert in a subordinate position promising to ensure repayment before the courts might be required. Epstein argues that in thirteenth-century Genoa, resorting 'to the courts or even arbiters to enforce a deal was to admit failure.'[62] The specific inclusion of an agreement not to make a complaint to court takes this idea further. Not only was it counterproductive to create a legally-binding document which stated a party would not take issues to court, it suggested that parties felt they needed to ensure that any issues were not dealt with officially. They seem to have hoped for a heightened level of trust between themselves, as the travelling party was obliging themselves to prevent damages and remove the courts as a bolster to the agreement, though it also introduced intense power dynamics between the parties.

Of the 49 contracts which included a promise not to take a complaint to court, only one of these was notarised in Barcelona, by Johannis Mayolli. Three were written in registers preserved in the ARM.[63] Four from ACM were by Guillem Pera Tarasconi and were written in a very similar form.[64] All the rest (40) were by Francesch Balle (ACM). The form of those not written by Balle was not significantly different. Balle's writing of the phase (in the 1340s), as

[61] ACM, PRT-14566, 100v.
[62] Epstein, "Secrecy," 325.
[63] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 93; ARM, ECR 366, 87r2; ARM, ECR 344, 75v2-76r, 97v3.
[64] E.g. ACM, PRT-14569, 135r2-135v.

in Lambert and Vola's contract, was almost identical to the form of phrase used by an unknown notary in 1256 in Mallorca, indicating that it was not a new development but could be included by parties at any time in the period.[65] Two contracts involved female parties, neither of which suggest any reason for this choice.

Other methods of adding security to agreements were sometimes used alongside a promise not to complain to court, demonstrating how reliance on the courts could be replaced. 12 of the 49 contracts which included such a phrase used a guarantor (24.5%). There are only 34 agreements in the set which included a named guarantor, making up only 2.4% of the set. The increased number of guarantors in agreements including a no-court phrase strongly suggests that the use of guarantors replaced security provided by the legal courts.

Reliance on legal systems demonstrates a particular form of trust and suggests that personal trusting relationships were lacking or weak. As shown in chapter 3, there were a variety of law courts open to Catalan merchants, run by the royal, ecclesiastical, and merchant administrations of the city. The court of the *Consolat de Mar* was run by the merchants of Barcelona. The choice to engage, or not, with the merchant-run court was therefore a choice for many of the parties to place their reputation in the hands of a group with whom they shared identity and social status (male Christian parties). By renouncing the right to bring a claim to court, the parties relied on social institutions and prevented the airing of issues in this public space with potential reputational affects.

Furthermore, parties of service agreements, in which an individual promised to serve another as a servant for a specified period of time, showed an attention to the involvement of the courts in the latter stages of the relationship, explicitly defining the manner in which the institution would be a part of relationship maintenance and punishment for contractual failure. Two service agreements stated that the leaders of a venture had the ability to capture the

[65] ARM, ECR 344, 75v2-76r.

man doing service *without* involvement of the court if they went against the agreement or retained any goods or wealth. Instead, extra-legal methods of capture and compensation are suggested. On 20 April 1243, Raimundetus Tarrago de Montealbo agreed to serve G. de Tora on his voyage to Al-Andalus and accepted punishment if he committed theft. He promised not to retain or take anything from Tora without his consent, and stated that Tora could 'seize' him (perhaps in order to be sent to debtor's prison), wherever he was found and demand compensation ('i fecero possis me capere ubique et restituam forifacturam').[66] A method of capture without use of the courts was directly stated on 29 April 1340, when Johannes Mellach agreed to serve Johanne Andree as a sailor for a voyage to Alcúdia to collect coral. The agreement included a promise that, if he did not undertake the service, Mellach could be seized anywhere, or caused to be seized under Andree's authority, without a court order ('possitis me ubique capere seu capi facere vestra propria auctoritate, abseque factura curie').[67] In contrast, the service promised by B. de Villare to Sanxo de Service on 29 December 1259, was explicitly supported by the customs of Barcelona, as Villare stated that if he broke the agreement, he should be handed over to the courts and customs of Aragon and Barcelona, following the customs of Catalonia: 'ad forum et consuetudinem Aragonem et barchinone ad forum et consuetudinem Catalonia.'[68] The parties decided to specify that the court would act as a backing to the obligations, relying more on institutions than the personal relationship between the Villare and Sanxo.

The documents demonstrate a variety of ways in which parties used the institution of the courts to build their relationships. While some specifically sought to avoid the courts with promises not to make complaints, or the ability to capture a service man without a court order, others used the language of the court and fraud to establish the trusting relationship that they were seeking. Documents performed trust work through law and court-related language to

[66] ARM, ECR 342, 196v3.
[67] ACM, PRT-14564, 16v1-17r.
[68] ARM, ECR 345, 120r1.

build trusting relationships in various and complex ways. A promise from a debtor to the investor to repay without any complaints to court, without damages or losses presented the obligation from travelling party to investor as one of weakness. In contrast, renunciations of legal protections built a relationship of stronger trust; parties entered into investing relationships with performatively honest intentions. These language choices were not affected by the gender or family connection of the parties.

Choices to avoid courts, to renounce potential lawful challenges to the contract, and promises not to commit fraud show that medieval merchants and investors were aware of their position within the legal institution and, with the help of the notaries, were able to use the framework within which notarial contracts were written to suit the individual relationship being created. The role of the courts in these documents was equally important as something to rely upon and something to (performatively) avoid in the creation of particular relationships using promises and obligations. In contrast to Greif, these documents present merchants making open choices about their relationship to the court, using institutional trust work as suited their needs.

5.3: Promises, truth, and faithfulness

On 16 November 1259, Lanffranci Botar entered a notarial office as part of his preparations to sail to the Barbary coast. He received an investment of 150 silver bezants from P. de Mirales for his voyage to Brisch, located between Cherchell and Ténès.[69] There were few details included in the contract, forming a rather brief agreement. While the whole contract formed an obligation, or in other words, a legally-enforceable promise to do certain things, Botar made three explicit promises. He promised to carry the invested bezants in the voyage to Brisch or wherever he went for the trading purposes, to return, and to trade the bezants along with his goods. Additionally, he promised to act in a certain way: to tell the truth about the whole affair and to be faithful. Botar did not appear in any other contracts though Mirales appeared in an agreement from 17 September 1242, investing in a voyage made by G. Mir to al-Andalus.[70] While we cannot be certain, Mirales and Botar may have had little business interaction before this investment. Perhaps the lack of relationship explains the need to explicitly promise both actions and future behaviours as a way to build a trusting relationship between them. Language choices in the form of promises in these contracts demonstrate various attempts to create feelings of trust and build personal relationships based on different needs.

Theoretically, all four of Botar's promises were binding, even though a promise to tell the truth and be faithful was nearly impossible to legally enforce. Different forms of promise in the documents suggest that rather, the concept of 'binding' needs to be understood in a wider sense so that we can recognise that promises were serving different functions, some action-based and some related to future disposition.

While all explicit obligations in the form of promises were considered to be legally enforceable in theory, some promises were often not verifiably deliverable but created an

[69] This town is identifiable on the Catalan Atlas: *Catalan Atlas*, Abraham Cresques, Bibliothèque Nationale De France. Mapamondi. [Barcelona: S.N, 1959] Map. https://gallica.bnf.fr/ark:/12148/btv1b55002481n/f3.item, 1375.
[70] ARM, ECR 342, 102r4.

expectation for a certain form of behaviour or hope for the future. This complicated the way in which the promises could be considered straightforwardly enforceable and provides clues about why such phrases were chosen by parties to the contracts. This is not to say that 'legally enforceable' phrases did not play a part in building relationships; legal institutions were not separate from trust but rather relied on trust. Instead, the different forms of obligations together formed complex trust work, chosen by the parties to build each relationship as required.

The categorisation of promises into actions and dispositions can help us to understand what trust work the language of promise was doing in these agreements. Promising practices form a part of everyday life and understanding engagement with promises is a part of understanding ourselves in society.[71] They are not universal but rely on varied rules and social contexts.[72] Friedrich and Southwood's 'Trust View' of promises posits that in promising, the promisor displays her willingness to 'be party to a certain kind of relationship with the promisee' such that the promisee has a certain faith or optimism in the promisor's character that the promiser will perform a desired action. When the promise is accepted, the 'promiser incurs an obligation to the promisee not to betray the trust she has invited.' Yet the presence of promises does not suppose a relationship without any trust. Indeed, as stated by Friedrich and Southwood, 'promising seems to presuppose a certain minimum background of trust.' Their 'Trust View' of promises allows us to consider in detail the action of a promise or what a promise does. In what ways do the promises in the notarial registers modify relationships and license others to 'have faith and optimism' in another person's character?[73]

While promises are often used to show intended future actions, they can also be seen as invitations to trust someone to do something. As Friedrich and Southwood argue, a

[71] Hanoch Sheinman, "Introduction: Promise and Agreements," in Hanoch Sheinman, *Promise and Agreements: Philosophical Essays,* (Oxford University Press, 2011), 8; Forrest, *Trustworthy Men*, 41.
[72] Sheinman, "Introduction," 26.
[73] Daniel Friedrich and Nicholas Southwood, "Promises and Trust," in *Promise and Agreements: Philosophical Essays,* ed. Hanoch Sheinman (Oxford University Press, 2011), 279-281.

distinction can be drawn between trusting one *simpliciter* and trusting one to *do* something. The latter is tied to the performance of specific actions, while trusting *simpliciter* is more general and about trust in another's character.[74] As such, all promises are part of the *active building* of trusting relationships. While one might make an action promise, or a promise to do something, a promise can also be used to express a desire to behave in a certain way or, in other words, be an invitation to believe that a person is trustworthy or will behave in a trustworthy manner. The choice to use promises said something about the quality of the relationship, whether experienced previously or hoped for. The utterance 'I promise' creates the relationship going forward and spoke to intended future actions and the existing basis on which the relationship was being built.

Both 'action' and 'disposition' promises can be understood as forms of Austinian speech act, which do not describe the world but change it, creating new duties or obligations.[75] Therefore, promises created trust, or a positive feeling, from the promisee to the promisor and could also enforce behaviour when formal and informal sanctions and incentives were involved.[76] The separation of 'action' from 'disposition' promises is not clear cut; both affected the relationship being built in the present moment of contract creation and the future. As such, 'action' and 'disposition' promises are considered as loose categories, which overlapped and affected each other, and both affected the trusting relationships being formed.

The relationships created by promises introduced important power dynamics, constituting the redistribution or transfer of authority between the promisee and promisor. Sheinman argues that 'a promise grants the promisee authority (or right) over the promisor's action.'[77] The use of promises in the agreements placed the promisor in a subordinate position

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[74] Ibid., 279.
[75] Austin, *Things with Words;* Gregory Klass and Ian Ayres, *Insincere Promises: The Law of Misrepresented Intent*, (Yale University Press, 2005).
[76] Forrest, *Trustworthy Men*, 35.
[77] Sheinman, "Introduction," 21.

to the promisee, who was now (legally and morally) obliged to perform certain actions or to behave in a certain way. This section explores the way in which the creation of promises and obligations in the agreements affected and built varied power dynamics within trusting relationships.

Sheinman encourages us to think about 'practices of promises' or the ways in which people made, kept, received, relied on, and engaged with individual promissory commitments.[78] In High Medieval France, McHaffie argues that written charters recorded spoken commitments using words such as *promittere* (to promise) or *jurare* (to swear).[79] Promises in Catalan notarial documents were similarly typically created with *promittere* and occasionally *convenire* (to agree). By examining practices of promising, and viewing promises as performance in both a specific and more general manner (on a scale of 'action promises' to 'disposition promises') we can consider the ways in which the 'practices of promise' at the time created and maintained trusting relationships.

Some promises built trust more than others; implicit promises and explicit promises did different things. A notarial agreement implicitly was made up of two simultaneous promises, as each party undertook obligations to the other. In this way, all of the agreements under study were implicit promises, whatever language they used. Contracts were legally-binding agreements or, in other words, legally-binding joint promises. However, the strength of the modification made to a relationship by a promise would be affected by how binding the created obligation was felt to be, and what sanctions or pressures were combined with the promise.[80] The addition of explicit 'action' and 'disposition' promises changed dimensions to the relationship being constructed.

Out of 1432 contracts, 753 involved an explicit promise of some kind. The contracts contained a varied number of promises (Figure 5.2). The most in one contract was seven

[78] Ibid., 4.
[79] McHaffie, *Warranty Obligations*, 43
[80] Forrest, *Trustworthy Men*, 41.

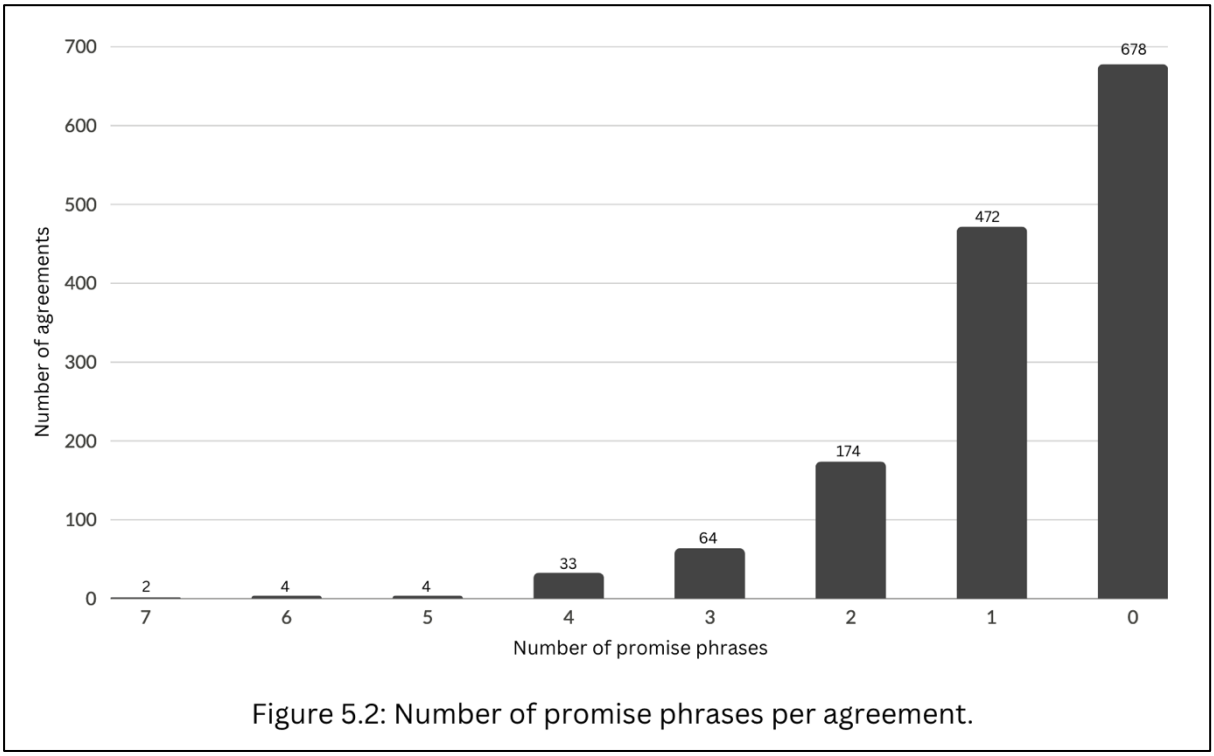


Figure 5.2: Number of promise phrases per agreement.

promises. Only two contracts contained seven promises. Four used six promises. Most contracts which used promises contained only one promise phrase (472, 33% of the set). However, nearly half of the contracts did not include any promise (678, 47.3%).

Both of the seven-promise contracts were related to the chartering of ships. On 13 June 1313, Borracius Mancofa and Stephanus Bordelli leased their ship to Petrus Terrache, Guillemus Pebrery, and Salvatori Felici.[81] On 15 September 1266, Bernardus Ferrari leased his ship to Petrus Bonifilius and Petrus Januarii.[82] In both agreements, all seven action promises related to the movement and loading of the ship, using promises to set up the service between the shipowner and the travelling merchants. In contrast, the contracts with six promises shared few characteristics.[83] Three were written in Mallorca between 1242 and 1256 and one was written by Pere de Torre in Barcelona in 1328. One recorded a *comanda* investment. On 10 September 1256, B. Pirtoro, a messenger for the King of Aragon, received an investment for his voyage to Alexandria from B. Miori worth 1000s. Six 'action' promises

[81] AHPB, Pere de Torre 6/1, 67v2-69r.
[82] Carme Batlle i Gallart and Elisa Varela Rodríguez, "Las relaciones comerciales de Barcelona con el norte de África (siglo XIII)," *Anales de la Universidad de Alicante. Historia Medieval* 7, (1989): doc. 5.
[83] ARM, ECR 342, 114v4-115r; ARM, ECR 344, 97v3, 179r1; AHPB, Pere de Torre 6/3, 77v-87r.

were used by Pirtoro, all related to repayment of the investment and payment of expenses.[84] The second, on 21 June 1256, recorded the purchase of space on Bartholomeus de Atide's ship by R. de Guiyar, Obtinus de Vinoles, and R. Multem. Six 'action' promises were used, two by those purchasing space, related to payment and provisioning the voyage. Atide promised to equip and sail the ship in return.[85]

The third, on 21 October 1242, recorded an investment and service agreement. P. de Rupe of Menorca agreed to serve F. de Granata on a ship sent by B. de Montecatano and B. Burget for a piratic voyage to Al-Andalus; the men were to travel for the purposes of profiting against Muslims ('ad lucrandum contra sarracenum').[86] Their agreement involved a mixture of 'action' and 'disposition' promises: Rupe promised to follow and serve Granata lawfully and faithfully and in return Granata promised to accommodate and look after Rupe. The two men had some form of ongoing relationship; a later investment of 140s. on 12 January 1243 was made in the same or a repeat voyage by Granata on the same ship by the wife or female relative of Rupe, Sibilie de Rupe. Granata's wife acted as guarantor suggesting rather complex familial and friendship ties.[87] This later agreement contained no explicit promise phrases suggesting a different level of obligations were required at the later point. The fourth dealt with the chartering of Nicholaus Tayani's ship by Nicholas Tayani by A. and R. Espuy on 27 February 1328.[88] In a similar manner to the contracts with seven promise phrases, here all promises dealt with the service provided by the shipowner to the merchants.

A test of the involvement of women as a factor which may have affected the inclusion/number of promises shows that gender had little effect. Figure 5.3 demonstrates that contracts involving women followed a very similar pattern as the whole set (Figure 5.2). Most contained no promises (70 out of the 129 contracts with female solo or co-parties,

[84] ARM, ECR 344, 97v3.
[85] Ibid., 179r1.
[86] ARM, ECR 342, 114v4-115r.
[87] Ibid., 142v2.
[88] AHPB, Pere de Torre 6/3, 77v-87r.

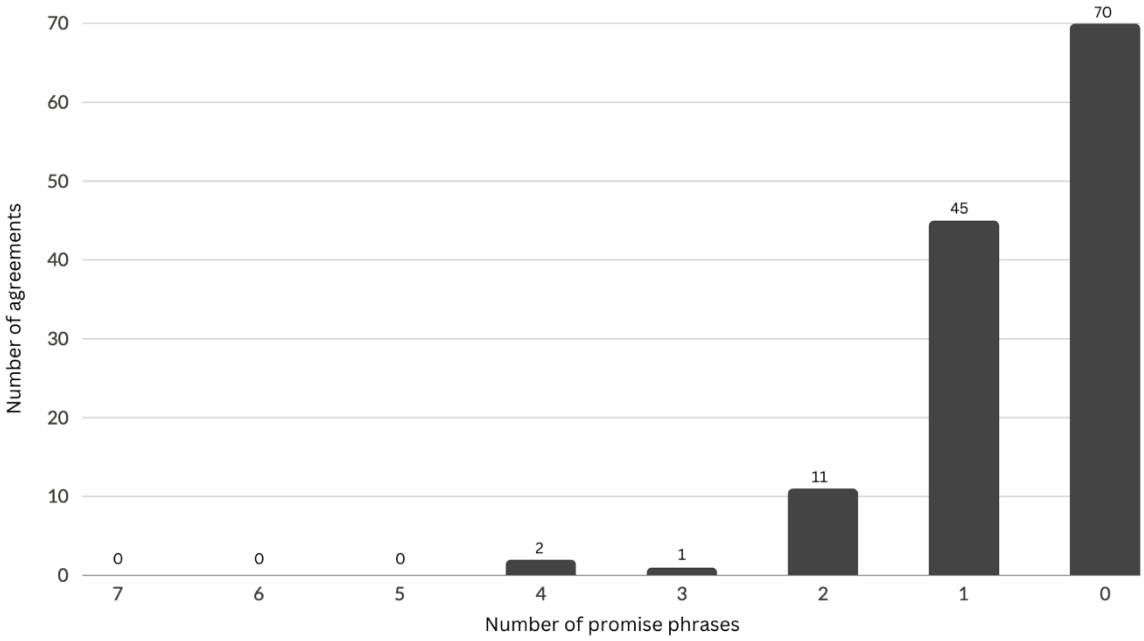


Figure 5.3: Number of promise phrases per agreement involving female parties.

54.3%, higher than in the whole set) while 35% of female contracts included a single promise, only slightly higher than in the set. None of the contracts which included five, six, or seven promises included female parties. Other factors must have affected the varied inclusion of promises in the contracts.

Action and disposition promises phrases were used in the contracts to carry out various functions. Action promises fall within a wide spectrum of specificity. While some action promises placed clear expectations and outcomes onto the travelling party, such as 'I promise to go to Alexandria, sell your goods and return with pepper', others were more undefined, such as 'I promise to take your investment for trading purposes and return to you with profit.' The latter supposes a greater level of pre-existing trust between the parties, as the travelling party was required to supply fewer details to obtain an investment. Disposition promises spoke to the character or future behaviour of the party. For example, a party might promise to 'tell the truth'. These promises were often not verifiably deliverable but created an expectation for a certain form of behaviour. Action promises were also qualified by phrases which defined the way in which the action was to be carried out, complicating the categories.

Most promises were action promises which referred to an obligation to use the invested goods or money in the voyage, to deliver or return profit back to the investor, or to repay the investment. For example, G. de Sancta Oliva, B. de Sancto Laurencio, and G. de Podio promised to repay the son of their investor, Berengarius de Sancta Oliva, three weeks after their voyage to Tunis ('promittimus reddere et dare filio tuo Bg nominem tuo [sic] ad iii septimanas postquam fuerimus in Tunicio').[89] It was also common to promise to undertake commercial activities without specific details, using a variety of verbs related to trading and selling. In 1314, G. de Puteo received £50 from B. F., a moneychanger. Puteo promised to use the investment to buy, profit, trade, and engage in business by buying and selling, carrying, and transmitting by sea and land ('Promito mercari lucrari negotiari et procacare emendo et vendendo portando et transmittendo per m[are et terram]').[90] While this was an action promise, as the travelling partner promised to carry out certain future actions, the undefined nature of the action made the obligation more related to the disposition of the party. The promise was not for a specific action but for a broad set of future performances. This form of promise suggests an expected future relationship of heightened trust between the parties.

Action promises normally functioned to make particular terms of the contract explicitly enforceable; breaking the obligation became a question of breaking word as well as the law. A promising verb was not necessary to explicitly express an obligation or desired future actions. For example, in 1349 Jaume Ferrer created an agreement in which P. de Podio Ventoso and A. de Preco received £51 in the form of gold florins from Arnaldus de Podio for trade in Cyprus. The travelling parties agreed to invest half of the investment in sugar from the Levant and the other half in pepper ('Emerciare medietatem in succare de senyor[91] et aliam medietatem in pipere').[92] No verb to express obligation was used in the agreement though

[89] ARM, ECR 345, 20v3-21r.
[90] AHPB, Pere de Torre 6/1, 60r2.
[91] Identified by Gual Camarena as the Levant: 'Sucre', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/7851
[92] AHPB, Jaume Ferrer, 19/5, bossa, entry 4.

this phrase took a common form which obliged the travelling party to use the invested money in a certain way during the voyage. In another contract from the same register, the same form of obligation was expressed with a promising verb. On 11 May 1349, Jaume Ferrer notarised a series of agreements related to a voyage undertaken by Johannes de Hospitali, Jacobus de Illa, Johannes Spita, and Guillelmus Vili, to Beirut and Cyprus. Illa and Spita promised to use an investment from the brothers Franciscus and Raimundus de Camp of £83 4s. and 5d. in the form of 17 silver marks, 30 jars of honey, and 18 chests of cotton to buy incense and ginger: 'promittimus implicare in ensens et in gengebre' ('we promise to invest in incense and ginger').[93] Both phrases had the same implication for the actions of the travelling party and set up an obligation that the specific action was to be followed; they both stated what sort of goods were expected to be returned with the investment. Yet in the latter contract, the parties chose to include the obligation in the form of a promise, elevating the trust work of the document. The latter example comes from a subsidiary document, part of a series of investments in the voyage made by Jacobus sa Illa and Johannes Hospitali. The primary investment document also phrased the investment return as a promise phrase: 'promittimus uterque nostrum in solidum vendere et implicare in pipere' ('we promise each of us together to sell and invest in pepper'). However, one subsidiary investment did not include a promise verb in the phrase, instead stating which goods were to be returned without any verb of obligation: 'emerciare medietatem in pipere et alteram medietatem in succari babilonni vel domesquin vel de senyor' ('to invest half in pepper and the other half in sugar from Cairo, Damascus or the Levant').[94] Rather than forming part of standard practice by a certain notary, the inclusion of promise verbs in relation to the goods to be returned from an investment

[93] Ibid., 102v; 'Ensens' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/7573; 'Gingebre', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/11124.

[94] AHPB, Jaume Ferrer 19/5, 102r; 'babilonni' is identified as Cairo by Gual Camarena: 'Sucre', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/7851.

varied, even within documents related to one voyage. This strongly suggests that the use of a promise phrase actively affected the relationship and was chosen by the parties.

Returning to Botar, whose preparations to sail to the Barbary coast in 1259 opened this section, we can see that the enforceability of action promises was also not always clear. When receiving an investment of 150 silver bezants from Mirales, Botar made three explicit promises: to carry the invested bezants in the voyage, to return, and to trade the bezants along with his goods. He also promised to act in a certain way: to tell the truth about the whole affair and to be faithful. In contrast, an agreement written by Lluch Pons in 17 May 1325 did not include a single explicit promise, though the contract created an obligation for Bernardus Lombardus to use an investment from F. de Sancto Miato worth £24 for trade in Eivissa and Chercell and return to Mallorca to repay the investment, pledging his ship as collateral.[95]

In many ways, despite being written 66 years apart, these agreements which were both written in Mallorca, were very similar. Both involved the investment of a set amount of money from one Christian man in a voyage planned by another Christian man to the Barbary coast and contained plans to return to Mallorca. Both referred to God's direction (see chapter 6) and to the custom of the sea as the main legal authority for the agreement. The main difference between the two was that Lombardus made no explicit promises while Botar made a series of promises to Mirales through the notary's drafting of the contract. Two phrases stated three promises of action: Botar promised to carry the investment in the voyage to Brisch, 'or wherever for the purposes of mercantile activities and to buy [things] there' ('promito portare in hoc viatico quod facio apud Brisch vel quocumque loco racione mercaderie et ibi emerciare'). He also promised to trade in profitable goods and bring back and trade with the investment ('ibi emerciare promito in utilibus mercibus etc. et emercia in tuum posse

[95] ACM, PRT-14554, 56r1.

reducere et emerciare').[96] These promises directly related to the actions agreed upon in the contract: to go to Brisch and to return, and to use the invested money for purposes of trade.

Lombardus and Sancto Miato show us that such promises were not necessary. The contract between them obliged Lombardus to go to Eivissa and then to Cherchell and then return to Majorca, without the use of the term *promittere.* While the promises were used to show intended future actions, we cannot forget their performative features, as an invitation to trust one to do something.[97] Action promises built relationships between the two parties, as the investing partner was invited to have optimism and place trust in the travelling partner to follow through in their intended actions, building clear expectations for the future.[98] This provided a form of assurance to the investing party that their investment would be returned.

Though action promises could provide a greater framework for litigation or arbitration, making a failure to perform the action a breach of promise, broad action promises did not always strengthen the possibilities for litigation. Not all action promises were verifiably deliverable but created an expectation for a certain form of behaviour. A promise to take an investment and trade with it was perhaps one of the least actionable forms of promise in court, because the terms were so vague. As such, broad action promises, closer to disposition promises, expressed a high level of trust and created a relationship that was distant from legal enforcement.

Botar additionally made disposition promises to Mirales, stating that he would tell the truth about the whole matter ('promitto de toto dicere veritatem') and be faithful ('promitto esse fidelis etc.')[99] Rather than creating an obligation to undertake a specific action, these promises expressed a intention to behave in a certain way in the future, including in the completion of actions. These promises were an invitation to believe that a person was

[96] ARM, ECR 345, 77r1.
[97] Friedrich and Southwood, "Promises and Trust," 279.
[98] Ibid., 281.
[99] ARM, ECR 345, 77r1.

trustworthy or would act in a trustworthy manner. This kind of promise built a greater level of trust between the parties, inviting a generalised form of trust.[100] The investing party changed their expectations of the future based on disposition promises, placing their belief in the positive intentions of the travelling party. In turn, the travelling party made disposition promises to build expectations for the future such that the investing party would be assured that their investment would be returned.

Disposition promises were less common than action promises and related to a few key behaviours. The most common was a promise to be faithful ('promittens esse fidelis etc'),[101] featured in 117 agreements. On 30 December 1339, Raymundus Osberti received an investment of £65 12s. 6d. in the form of 131.25 quintals of figs from Petrus Reya for a voyage to Tripoli. Osberti promised to be faithful and lawful 'concerning all aforementioned [things]' ('super praedictis promito esse vobis fidelis et legalis'). [102] Rayundus Osberti's promise followed the common way in which the phrase was used in *comanda* agreements; the promise was given from the travelling to the investing party, bringing the nature of the future behaviour of the former into the contract. The phrasing called on the reputation of the travelling partner and heightened the level of trust built in the relationship. The word *promittere* was not always used; three contracts from Barcelona and one from Mallorca used *convenire* (to agree) instead of *promittere* to create an obligation for faithful and lawful behaviour.[103]

The term *fides* carries a number of connotations. The term refers to both secular and religious behaviours and can be translated as a variety of trust-related words, such as faith, confidence, reliance, belief, credibility, and honesty. Both in religious and secular terms *fides* referred to the reputation of an individual within a community. In secular terms, loyalty or reliability was called upon. For example, vassals swore to be faithful/loyal (*fideles*) to lords and

[100] Friedrich and Southwood, "Promises and Trust," 279.
[101] AHPB, Pere de Torre 6/2, 150v1.
[102] ACM, PRT-14564, 126r-126v.
[103] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 38, 39, 41; ARM, ECR 342, 41v2.

kings, creating ideas of obedience and power inequalities.[104] Forrest has shown how the concept of fidelity could encompass both 'allegiance to a specific person and the more general character trait of reliability.'[105] Indeed, the use of *fides* by the legal commentators in chapter 2 spoke to the reliability, and moral and professional reputation of a person or writing within the wider, public community.[106] The term spoke to the faithfulness of a person to others, of their reputation for reliability and being true to one's word.

Religious meanings then overlay these ideas. Religious concepts tied to *fides* also spoke to the relationship between a person and their community. Hyams and Forrest argue that the term *fides* could be used to influence relationships both between humans and with God.[107] Both involved the concept of belief as an attitude towards an unknown being or future, or trust in something uncertain.[108] Morgan has shown that trust words such as Greek *pistis* (faith) and Latin *fides* (faith) were essentially relational, affecting the formation of personal relationships both between individuals and with institutions such as the church. [109] Faithfulness was about one's relationship to God and to the wider Christian community, speaking to the way in which individuals belonged to a religious community based on shared practices.[110] *Fides* spoke to the feeling of belonging to a 'community of the faith' as well as being in good faith with one's neighbours.[111]

Hyams argues that while the use of *fides* 'implies trust between the human parties', it really denoted that a promise was given on faith, with both human and Heavenly witnesses. When breached, an agreement on faith was then a breach of faith, or 'fidei laesio', which

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[104] Forrest, *Trustworthy Men*, 48, 101.
[105] Ibid., 101.
[106] Zabarella, *Lectura*, 53r; Imola, *Ioannes de Imola*, 100v, 101v; Panormitanus, *S[e]cun]da Panormi[tani],* 143v.
[107] Hyams, "Faith," 137.
[108] Forrest, *Trustworthy Men*, 16.
[109] Teresa Morgan, *Roman Faith and Christian Faith: Pistis and Fides in the Early Roman Empire and Early Churches* (Oxford University Press, 2015).
[110] Peter Biller, "Words and the Medieval Notion of "Religion"," *Journal of Ecclesiastical History* 36, no. 3 (1984): 360-362.
[111] Forrest, *Trustworthy Men,* 352

allowed the injured party to take the case to an ecclesiastical court. For Hyams, 'making faith neatly leaps the gap, then, between human trust and faith in God.'[112] There were also interesting comparisons between concepts of religious faithfulness and contracts, as pointed out by Forrest. Baptism was seen as a binding contract, while Laurance of Spain (ca.1180-1248) compared godparents to guarantors (*fideiussores*) of a pledge or debt because godparents were responsible for the godchild's adherence to faith, like guarantors were answerable for a debt.[113]The term *fides*, carrying connotations of the relationship between the parties and God, used the religious faith and character of the party as a support for their reputation in secular business.

Contemporary discussions of the term combined a religious understanding of faith with the building of wider social relationships. Forrest notes that Augustine demonstrated that much that humans take on trust is invisible, such as 'the existence our own minds, our trust in another person, or that person's trust in us'. For Augustine, friendship required faith between people as we are required to act in 'good faith' even when we lack evidence of trustworthiness. His analogy between personal trust and faith in God was a comparison many medieval writers found uncomfortable.[114] However, Forrest shows that medieval canon lawyers discussed the term 'faith' as religious belief alongside concepts such as 'contracts, promises, debts, securities, equity, and 'good faith' in general'.[115] Hyams too notes that 'most ordinary folk' would have used the term flexibly, speaking of faith in God, but also speaking of faith in their friend and in other secular senses.[116]The complex deep and implicit metaphorical connections between the religious and secular spheres makes any attempt to identify specific conscious intentions in the usage of the term *fides* by an individual difficult. The key shared characteristic was the placing of an individual's reputation in conversation with the community.

[112] Hyams, "Faith," 143-144.
[113] Forrest, *Trustworthy Men*, 29.
[114] Ibid., 27.
[115] Ibid., 28.
[116] Hyams, "Faith," 138.

The use of *fides* to create obligations was a particular choice which asked the receiving party, normally the investor, to consider the trustworthiness and integrity of the promisor and to call upon their reputation within the community. This provided assurances about the travelling party's future intentions to behave in a certain manner. *Fides* was relatively frequently used in agreements to make obligations 'in good faith'. The term was used in 161 agreements (11.2% of the whole set). The expression 'bona fide' was used in a variety of phrases, though was frequently used in action promises, transforming the phrase by adding disposition-related obligations. For example, on 4 August 1265, Raimundus Bucharii received an investment from Jacobus Ferrandi for a voyage to the Barbary coast. Ferrandi invested £27 3.5s. plus an additional £26 in the form of two decorative covers for a person and a horse. Bucharii promised to sell the invested goods 'in good faith' ('promitto vendere bona fide').[117] Similarly, the phrase was used in relation to action promises to complete the agreement. On 15 July 1316, Petrus Just appointed Jacobus de Porio and Petrus de Plano as his agents and agreed to send his ship, 'Saint Anthony', to Aigues-Mortes or Ardes [sic] to pick up merchandise for the agents and then take it to Cyprus. Just promised them that he would fulfil the agreement 'in good faith and without any deceit or fraud' ('promito […] accedere et complere vobis […] bona fide et sine aliquo dolo et fraude').[118] With meanings rooted in public commitments, the addition of pledges of *faith* in the agreements consciously asked the parties and community to rely on and trust the disposition of the promising party.[119] Another particularly common use of 'in good faith' was in relation to parties promising to do the best that they could in future decisions: 'ut melius potero bona fide.'[120] Obligations to do the best one can are explored in section 6.4.

Speaking to a general character trait of reliability within a community, making obligations and promises based on good faith heightened the relationship building work in the

[117] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 18.
[118] AHPB, Pere de Torre 6/2, 141r2-141v. Also AHPB, Jaume Ferrer 19/6, 27v-29r.
[119] Forrest, *Trustworthy Men*, 46.
[120] ACM, PRT-14566, 133v.

contracts, asking the promisee to consider the trustworthiness and integrity of the promisor, and therefore providing the promisee with added power in the relationship. The phrase *bona fide* strengthened 'action' promises directly related to the central actions of trade in the contracts. In August 1241, Reynaldus Banaor promised and agreed 'in good faith' ('promitto et bona fide convenio') to Guillellmus Durande that he would arrive in Trapani or Palermo to trade within eight days of the voyage.[121] This was a simple action promise which was heightened by making the promise on good faith; Banaor was inviting Durande to place his trust in the former's character and intentions. Likewise, in January 1272, Gueraldus Ferrarii de Sancto Gervesio and Simon de Riumayoles promised the notary Petrus de Ribalta in good faith, that they would sell his invested textiles, shellac/gum resin, coins of gold, and other goods ('telis, lacha, duplis auri et aliis rebus')[122] and sell the commonly held goods in good faith: 'promittimus dictum commune illuc vendere bona fide'.[123] Again, a simple action promise, to sell and reinvest goods, was strengthened by the promise being made on good faith, adding dispositional implications. Ribalta was asked to place his faith in the intentions for Ferrarii and Riumayoles to stay true to their word.

Parties in two contracts both notarised by Jaume Ferrer explicitly stated that they would trust in the faith and loyalty of the party chartering a ship. On 14 May 1349, Petrus Pochasanch loaned his ship, 'Santa Maria dela Merca', to Petrus de Trosis. This was not the first time that he had loaned his ship to other merchants in order to sail it to Beirut. However, this time, he was too occupied with 'arduous business' in Barcelona ('ardius negociis esse in dicta ciuitate barchinone diversi mode occupatum') which prevented him from undertaking the voyage himself. He instead chose to 'trust in the industry, knowledge, faith, and loyalty'

[121] ARM, ECR 342, 32v1.
[122] Gual Camarena identifies 'lacha' as shellac or gum resin from various tropical trees, which was commonly used as a red dye: 'Lacha' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/9658; see also, for the term *duplis*, 'Duplo' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/22348; 'Doblen' in Gual Camarena, *Vocabulario,* https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/8210.
[123] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 35.

of Trosis ('confidensque de industria scientia fide et legalitate mei dicti Petri de Trosis').[124] The ownership and patronage of the ship was transferred to Trosis, deputising him as patron until its return to Barcelona from Beirut. In a now very damaged contract made the same year, the same relationship was created for Berengarius and Guillemus, (both surnames are now illegible) who co-owned the ship 'Saint Martinus'. The ship was leased for travel to Famagusta and then to Syria and Cyprus. Berengarius stated that he was too busy with business in Barcelona and appointed B. Alcunei as the deputised owner and patron of the ship, 'trusting in [Alcunei's] industry, knowledge, faith, and loyalty' ('Con[fiens de] industria sciencia fide et leqalitate vobis B. Alcunei').[125] These contracts did not use the description 'bona' and instead specified that the loan of the ship was on the basis of the reputation, including the *fide*, of merchants.

Similar to the term *fide*, the word *fideliter* was used to qualify a promise with dispositional meanings. There are 144 agreements in the set (10%) which used the term *fideliter*. These show no particular trend by time or location. The use of faith talk, referencing the secular and religious reputation of the travelling merchant, did not provide enforceable obligations. The enforceable obligations came in other forms. Faith talk spoke not to the courts but to the investing party by calling upon the social reputation of the merchant.

Fideliter was commonly tied to secular meanings through its combination with *legaliter.* The language of faith and lawful behaviour assured investing parties of the travelling party's future actions both through reference to their reputation and their (performative) desire to avoid court proceedings. For example, on 1 December 1318, Paschalis de Englada, Jacobus Canyoles and Periconus Cenderii formed a partnership for trade in Cyprus.[126] The agreement written by Bernat de Olives contained 'fideliter et legaliter' four times: the three partners promised each other 'to trade and manage the business in a merchant-like, faithful, and lawful

[124] AHPB, Jaume Ferrer 19/6, 30r-31v.
[125] AHPB, Jaume Ferrer 19/8, 6r-6v.
[126] ACM, PRT-14540, 113v-114r.

manner' ('promitimus procurare et procraciare mercantiliter fideliter et legaliter'); they faithfully and lawfully promised 'to maintain themselves and behave in good faith and lawfully' ('promitimus fideliter et legaliter nos habere et bonam fidem et legalitatem adinvicem portare'); they agreed to 'faithfully and lawfully render a true account' of the business ('fideliter et legaliter reddere iustum compotum'); they agreed to divide the common account faithfully and lawfully ('converimus [*sic*] in praedictam comunem racionem diuidatur […] diuidium pro diuidio fideliter et legaliter'). The second usage related to general behaviour or disposition. The three others qualified an obligation of action. The inclusion of 'fideliter et legaliter' specified the manner in which each action was to be carried out; the disposition was defined and the reputation of the partners was called upon. Each was required to act in a particular trust-building manner. A promise combined with giving faith made the agreement more formal and foregrounded the reputation of the parties.[127] It is notable that the large majority of documents (89.7%) did not include the qualification as a part of any of promises. 27 of the contracts using the term were partnership contracts and the rest were a form of *comanda* investment. In investments the term formed part of an expression which invited the investing party to place their trust in the word and standing of the travelling partner, explicitly bringing questions of reputation into the making of the promise.[128] The inclusion of references to faith and faithfulness heightened the force of the agreement and the work that it was doing for the personal relationship constructed.

A contract written on 2 July 1316 provides clues of the importance of the inclusion of a promise made 'faithfully'. Pere de Torre notarised a document between Salvator Felicii and B.S. the moneychanger. Salvator Felicii, the travelling partner, received £20 from B.S. for trade in La Litera (Aragon) or Urgell (Catalonia).[129] A promise made 'faithfully' was crossed out in the document (Figure 5.4). This was the only promise in the document. The obligations were

[127] Forrest, *Trustworthy Men*, 44.
[128] Ibid., 46.
[129] AHPB, Pere de Torre 6/2, 132r2.

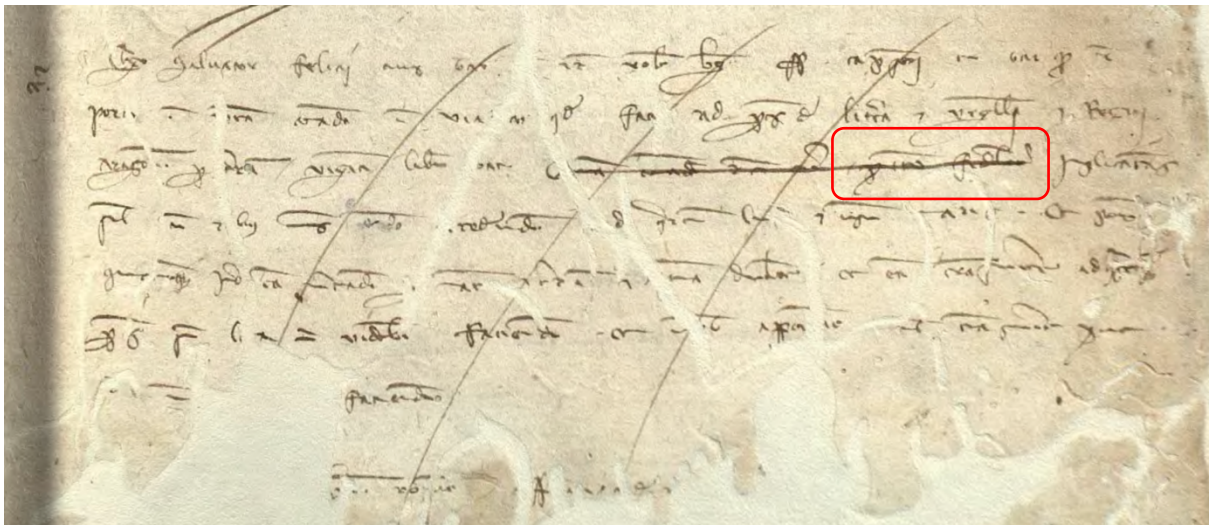


Figure 5.4: AHPB, Pere de Torre 6/2, 132r2, showing the crossing out of 'promito fideliter'.

instead set up with the verb *convenire* which opened the contract: Felicii agreed to carry the investment to two locations in Aragon, invest it with his own goods, return, and split the profit 3:1. Felicii also stated that he would carry the investment wherever he wanted. The contract was followed by two very brief subsidiary documents which added no clauses to the agreement, stating only the name of the investing party and the amount of investment.[130] The decision to remove an explicit promise with reference to faith suggests that there was a conscious decision that this form of phrase to set up the relationship was not desired. Rather than seeking to create an intense relationship of promise obligations, the contract presented a relationship without the need for added securities, even allowing the travelling party to choose details of the future venture (on choices, see chapter 6).

The combination of *fidelis* and *legalis* emphasises the main connotations of *fidelis* in the documents. The use of 'lawful' focuses the phrase on the conduct of the business and the reputation of the travelling partner in relation to mercantile activity. On 30 December 1339, Raymundus Osberti agreed to take 134.25 quintals of figs from Petrus Reya to sell in Tripoli. Osberti made three 'action' promises: to travel to Tripoli, to engage in trade and mercantile activity on the journey, and to repay Petrus Reya his share of the profits. Towards the end of

[130] Ibid., 132r2 [Subsidiary documents 2, 3].

the agreement Osberti then promised to be faithful and lawful: 'super praedictis promito esse vobis fidelis et legalis.'[131] The promise to be faithful and lawful tied off the agreement with a focus on the reputation and trustworthiness of the travelling party, building the professional relationship by giving his word that he would behave in a dependable and honest manner in relation to the entire matter.

It is likely that the abbreviated phrase 'Promittentes esse fideles etc.'[132] was shortened from 'promittere esse vobis fidelis et legalis' though the abbreviation did not save a great deal of space or words. This suggests that the promise to be faithful and lawful was common enough that the notaries were used to writing it. Nevertheless, only 96 agreements included the phrase (6.7% of the set) making its inclusion an important choice by the parties to build the relationship with questions of reputation and character.

Wider concepts of truth and honesty were frequently connected to the concept of faithfulness in the documents, emphasising a secular sense of relationship building and a trustworthy reputation in business. 44 agreements (3% of the set) included an agreement to speak the truth, such as 'promitto de toto dicere veritatem' ('I promise to tell the truth about everything').[133] 22 of these were *comanda* investments, one was a service agreement, one was a ship sale, and 20 were partnership contracts. For example, on 27 August 1247, Uget de Calarus and Vitalis de Angera created a partnership in Mallorca for trading purposes. The two men promised to be faithful and lawful to each other ('promitimus unus nostris alteri esse fidelis et legalis') and to speak the truth in all matters related to the agreement ('de toto dicere veritatem').[134] They did not state where their partnership would be trading and agreed that the partnership would 'continue among them for as long as they both wished to maintain it ('sit duratura inter nos durum concordare voluerimus'). This agreement constructed a relationship

[131] ACM, PRT-14564, 126r-126v.
[132] AHPB, Pere de Torre 6/2, 138v2, 160v2; ARM, ECR 345, 77r1.
[133] ARM, ECR 345, 77r1.
[134] ARM, ECR 343, 205r1.

between Calarus and Angera which relied on their confidence in each other to carry out operations in a lawful and beneficial manner with few future actions specifically defined. The decision to include an honesty phrase may not have been due to genuine feeling. Calculation and signalling by the parties may have underlaid linguistic decision making. Whether this was the case or not, inclusion of the phrase was an attempt to influence future feelings of obligation and confidence as a part of partnership creation. In the next agreement recorded in the register on the same day, Calarus sold Angeria a quarter part of a boat using the same witness as in the partnership agreement but with no promise phrases.[135] We have no other record in the notarial registers of these two men and cannot know how long the partnership lasted. However, the basis of their partnership on confidence in the future actions and disposition of the other partner stands out in comparison.

Truth and honesty were particularly important in promises to provide an accurate account of business to the other party of the agreement. 122 agreements (8.5% of the set) referenced the keeping of an accurate account or fair accounting of the agreement using the term *computes/compotus/computare*.[136] Reya's investment in a common fund for Osberti's venture to Tripoli on 29 December 1339, included a promise by Osberti to be faithful and lawful and that he would render a 'trust and just account' of the business ('promito esse vobis fidelis et legalis et inde verum et iustum compotum reddam vobis').[137] It was not uncommon for a promise to give a trust and just account to be combined with a promise to be faithful and lawful. These phrases combined action and disposition promises, to give an accurate account and to behave faithfully and lawfully. All contracts created an implicit obligation to accurately represent the profits in relation to repayment. This explicit promise phrase elevated the obligation and strengthened it, so that parties were relying to a greater extent on the contract

[135] Ibid., 205r2.
[136] "Computus", *Logeion*, https://logeion.uchicago.edu/computus.
[137] ACM, PRT-14564, 126r-126v.

for trust-making, perhaps due to a fear of fraud or deception in accounting and communication.

Notarial influence upon the inclusion of 'true account' phrases may have been strong. Francesch Balle included the phrase in 43 documents in his 1340 register.[138] There are 92 trade related agreements in his register, meaning that 46.7% included a promise related to accurate accounting. This represents a substantially higher proportion of documents when compared to the 8.5% of agreements with the phrase in the entire set. Other notaries in Barcelona and Mallorca occasionally included a similar phrase, without a clear pattern; the inclusion of the obligation in many cases resulted from the particular relationship being navigated. Three agreements from Barcelona, all written by Berengarii Lupeti, included an almost identical agreement to be faithful and lawful and to return with a correct and lawful account of the affair.[139] On 20 January 1253, an unknown notary helped G. Jofre de Marseille and Johannes Hugoni to create a partnership in Mallorca in relation to the latter's journey to Montpellier and Marseille which included the obligation to carry out the contract in good faith and lawfully, to speak the truth, and to provide an accurate account.[140]

The keeping of fraudulent accounts could have been litigated against without an explicit statement. Rather than creating a basis for legal action, such promises should instead be understood as a part of the building of a relationship in which honesty and fraud were a particular concern. The nature of the phrase suggests that it may have been more important in long-term business agreements, such as partnership agreements, in which the accounts dealt with various ventures. However, the phrase appeared in 85 *comanda* documents and only 27 partnership agreements (and 10 in other types of contract). The *comandas* were also for various locations of trade, with no clear pattern, while no agreements with parties of

[138] E.g. ACM, PRT-14564, 2r1-2v, 2v1-3r, 4v1-5r, 8v-9r, 9v-10r, 18r1-18v, 25v1, 35v1-36v, 58r-85v, 50v-51r, 50r2-50v, 70v, 75r-75v, 79r-79v, 83v, 113v-114r, 126r-126v, 128v2-129r, 129r, 129v1, 143v-144r, 144r-144v, 157v-158r, 159r-160r, 160v-161r, 161r-161v, 162r, 162v, 163r, 165v2-166r.
[139] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 38, 39, 41.
[140] ARM, ECR 343, 364r1.

different religious communities included the phrase. Apart from the influence of Francesch Balle, the phrase appears instead to speak to an anxiety in the relationship between the parties, whether out of genuine feeling or calculation, that the business would be conducted in a fair manner, with clear and honest communication, with no social on contractual factors affecting its inclusion. Indeed, the factor of notarial influence does not mean that the significance of the phrase decreases. The inclusion of trust-making phrases was still negotiated with the parties and formed relationship-building work.

Sometimes a document was doing a great deal of trust work to build a relationship. In most ways, a document written by Jaume Ferrer on 27 March 1349 was a normal *comanda* investment; Raimundus de Pratis accepted delivery of £100 from Bernardus de Vic, a textile merchant and citizen of Barcelona, to be taken to Perpignan and other parts in the Kingdom of Aragon and invested in wine and cloths. However, the document included one of the most complex forms of sincerity promise in a *comanda* agreement in the set:

> 'Promittens vobis super predictis ero vobis et vestris fidelis et legalis, diligens, sollicitus et intentus. […] Et quod veniam vobiscum et [___]uo ad verum rectum justum et finale ac legale compotum et rationem, Ita quod omnis dolus malus et fraus inde aberunt. Et quod dicam et scribam vobis et vestris de omnibus veritatem'.[141]
>
> [Promising to you concerning the aforementioned, I will be faithful and lawful to you and yours, diligent, solicitous, and attentive. […] And that I will come to you and [___] to a true, right, just, final, and legal account and calculation. So that all evil and deceit shall be far removed. And that I will state and write to you and yours the truth about everything.]

As the parties were identified by town, it is hard to trace their appearance in other documents across the period to get a sense of the relationship into which we are stepping. Nevertheless, compared to the majority of *comanda* investments this contract was doing significantly more relationship and trust-building work and perhaps demonstrated a greater concern for the

[141] AHPB, Jaume Ferrer 19/5, 4v-5r.

maintenance of honest communication about the business. These parties created a contract which suited the needs of the specific relationship.

Service agreements, which were similar to *comanda* investments in being for specific voyages and normally short-term in nature, also relied on the language of fidelity and lawfulness. However, these agreements used promise phrases and faith language to create an unequal and submissive relationship between the parties.[142] On 6 April 1243, Ugonus Bacher of Marseille acknowledged the service of P. de Tapia and the need to him with provide payment in return. Tapia responded by promising to follow the voyage made by Bacher and to be 'faithful and lawful in all things' ('promitto dictum viaticum sequitur et esse fidele et legale in omnibus').[143] Similarly, on 5 January 1242, B. de Montecatano, B. Burgeta, and Arnaldus Peltre recognised the service of Michelis de Montesono and the need to pay him 20 bezants. In return, Montesono promised 'to be faithful and lawful in all things throughout the voyage in good faith' ('esse fidelis et legalis in omnibus per totum dictum viaticum bona fide').[144] The position of Tapia and Montesono as men providing service to merchants undertaking a voyage had specific implications of the disposition promise of faithful and lawful actions. These men were promising to be obedient to their leaders during the trading venture. Links between the language used by the serving party in these agreements and the travelling party in *comanda* agreements encourage us to consider the subservient relationship that a travelling party had to the investing party in even the most basic investment contracts.

Both action and disposition promises carried out trust work as character-management techniques which assured investing parties that travelling parties intended to fulfil their obligations. Action promises made faithfully and lawfully or in good faith added dispositional concepts and centred the behaviour and character of the promisee, adding assurance about their future intentions. Promises to be honest, speak the truth, and provide an accurate

[142] Forrest, *Trustworthy Men*, 16, 58, 101.
[143] ARM, ECR 342, 192v1.
[144] Ibid., 138r5.

account further emphasised the positive intentions of travelling parties, actively using character-management phrases to heighten the trust work of the document when the situation required it. A concern with a reputation for honesty was also present in the Geniza letters explored by Goldberg.[145] Though in both the letters and the notarial contracts here, it was a small proportion of merchants who were particularly concerned about another merchant's reputation for truth telling.

[145] Goldberg, "Choosing and enforcing," 31.

5.4: Swearing oaths as character management

On 21 March 1335 in the notarial office of Bernat de Olives, Petrus de Podialibus, son of Jacobus Podialibus and a citizen of Mallorca, placed his hand on the Holy Gospels and swore, with God as witness, that he would not use his minority age to legally disregard a contract he had made with Berengarius Cardona of Girona: 'jurans sponte corporaliter ad sancta dei quatuor euangelia contra predicta non venire pretextu minoris etatis nec aliis racione' ('swearing voluntarily, bodily touching the sacred Four Gospels of God, not to come against the aforementioned on the pretext of minority or by any other reason').[146] Petrus' age was not stated, though he was under twenty-five years old. He had received £30 from Cardona which he would trade in Cyprus before returning to Mallorca. Three days earlier, on 18 March 1335, Petrus created a partnership with Andreas de Truyllio worth £369 4s. 3d. for trade in Sicily and elsewhere. Again, he swore on the Holy Gospel not to use his minority status to undermine the contract.[147]

Petrus was among a minority of Catalan merchants who swore an oath in relation to their trading activities. An oath is a solemn or formal declaration invoking God as witness to the truth of a statement or the binding nature of a promise or undertaking.[148] As a result, the inclusion of an oath increased the force of a promise; swearing an oath meant that the oath-maker sought to add to their perceived reliability by employing religious backing for an obligation.[149] Vicens emphasises that in medieval Iberia oaths sworn in relation to witness testimony placed the oath-maker's reputation and trustworthiness at stake in the eyes of the community, while Hyams argues that in twelfth-century England, the swearing of an oath was

[146] ACM, PRT-14545, 116v1.
[147] Ibid., 119v3-120r.
[148] "oath (n.)," In *Oxford English Dictionary*, (2023), accessed 11 September 2024, https://doi.org/10.1093/OED/7256271698.
[149] Swain, "Contract," 4; Forrest, *Trustworthy Men*, 43; Riccardo Saccenti, "Beyond the positive law: The oath and vow as a theological matter between the 12th and early 13th centuries," in *The Summa Halensis: Doctrines and Debates,* ed. Lydia Schumacher (De Gruyter Mouton, 2020): 269.

the most common way in which 'ordinary folk' strengthened their word.[150] Indeed, oaths were commonly used in forming promises and obligations across western Europe.[151]

The decision to include an oath in an agreement altered the relationship between the parties and provides an insight into the building of relationships between and within groups. Oaths were a character-management technique which provided an additional level of punishment should the travelling party fail in their obligations, threatening religious punishment, excommunication, and possibly community punishment, in terms of reputational damage. This assured investors that the travelling party had more motivation to fulfil their obligations. As a result, some travelling parties invoked the support of God, swearing oaths on their intention to fulfil the contract, assuring the investing parties of their reliability and good intentions, as well as their trustworthiness by placing their character and good intentions into the wider religious community and invoking God as witness to their trustworthiness.

A minority of the documents included an oath. 126 (8.8%) agreements in the set involved the verb 'jurare/iurare' in some form, ranging from across the period, in both Barcelona and Mallorca. Some contained a simple phrase at the end of the agreement made by the travelling party, presumably to swear that the obligations contained in the document would be kept by the swearing party. Sometimes simply the words 'et hoc juro' ('and to this I swear')[152] were used, and sometimes a person was named, such as 'hoc jurat dictus Periconus' ('to this swore the said Periconus')[153] or 'hoc juro dictus Bernardus ad dei etc.' ('to this I, the said Bernardus, swear to God etc'.)[154] These forms of oathtaking suggest that the investing party perceived a greater level of risk in the relationship which an oath by the travelling party may have helped to mitigate. The addition of the oath placed greater pressure

[150] Belen Vicens, "Swearing by God: Muslim Oath-Taking in Late Medieval and Early Modern Christian Iberia," *Medieval Encounters* 20 (2014): 121; Hyams, "Faith," 139.
[151] Forrest, *Trustworthy Men*, 43; McHaffie, *Warranty Obligations*, 44.
[152] ARM, ECR 345, 120r1.
[153] ACM, PRT-14540, 114v-115r.
[154] Ibid., 132r3-132v.

on the travelling party to act with integrity and fulfil the agreement, as they faced both secular and religious penalties.

Oaths often created specific power dynamics in relationships. Vassals took oaths to their lord or king and were labelled as *fideles* or loyal subjects; the inferior party, the vassal, 'put his faith into the hands' of the superior party.'[155] While oaths could be lateral, such as sworn between equals in guilds, the oaths in these agreements created a particular unequal relationship between the parties. Débax argues that oaths always implied service in some way, even between lords or between relatives.[156] Oaths by travelling parties provided investing parties with greater coercive power within the relationship. Given that the travelling party was the side with obligations to fulfil as a part of *comanda* investments, it is not surprising that we do not find investing parties swearing to agreements in the same manner.

30 agreements recorded details of how oaths were sworn. The agreements recorded that oaths was taken by placing a hand on the four Gospels, as Petrus de Podialibus did.[157] This followed western European traditions. Duda and Jóźwiak find that, until the twelfth century, in western Europe oaths were normally taken in churches with hands placed on altars or reliquaries.[158] From the twelfth century, common practice became taking an oath on the Book of the Four Gospels, possibly originating in eleventh-century Italy and spreading to the territories of France and Spain in the mid-twelfth century.[159] Similarly, Débax finds oaths sworn on the Holy Gospels common in southern France from c.1150.[160] As such, the placing of hand on the Gospels in Mallorca and Barcelona, explicitly recorded in 30 documents, follows wider traditions of oath-swearing in western Europe.

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[155] Forrest, *Trustworthy Men*, 48, 101.
[156] Hélène Débax, "Oaths as an Instrument of Power in Southern France, 11th-12th Centuries," *Medieval Worlds* 19 (2023): 170.
[157] ACM, PRT-14545, 116v1.
[158] Michalina Duda and Sławomir Jóźwiak, "On What Were Oaths Taken in Christian Latin Europe in the High Middle Ages (12th-Early 14th Centuries)?" *Mediaevistik* 32 (2019): 143.
[159] Ibid., 144-145, 152.
[160] Débax, "Oaths," 174.

Most oaths in the documents were made in relation to the completion of the contract, adding pressure to the travelling party to fulfil their obligations and assuring the investing party that the contract would be completed. In August 1256, B. Portarius received an investment of textiles, clothing, and garments, worth £104 from Mancho de Rapanisio to be repaid in Alexandria. The agreement was full of promise phrases, many made on good faith: Portarius promised to pay all customs duties, to repay within two months of arrival in Alexandria, and to undertake the voyage by the middle of September.[161] The agreement ended with an oath by Portarius, touching the four gospels with his hands, that 'all the aforesaid things, individually and collectively, are bound and firm, and that he shall uphold and fulfil them in good faith' ('praedicta omnia singula et universa iuncta et firma et attendat et compliti bona fide').[162] In a similar manner to uses of 'in good faith' in promises, the oath encourages us to consider Portarius' trustworthiness in relation to his relationship to God and the wider community. The parties chose to form their interpersonal relationship with reference to the relationship which bound all Christians to God and to each other. The oath firmly set up the relationship as one where Rapanisio maintained complete control, obliging Portarius in various ways to fulfil the agreement to his satisfaction. The need to set up obligations in a strict and extensive manner, underpinned by an oath, suggests that the investing party considered the relationship going forward needed greater trust work, including character management through both religious and secular reputation.

However, an oath did not always present unequal power relations. In a partnership agreement written on 7 February 1335, Bernardus de Cardona and Ferrarius Sagranada formed a partnership for a voyage to Flanders. The two men promised and swore on the Holy Gospels to each other that they would handle the affairs of the journey as stated in the

[161] ARM, ECR 344, 75v2-76r.
[162] Ibid., 75v2-76r.

agreement.[163] In this case, the oaths made by the parties established them on equal footing in relation to the obligations established in the agreement.

A further 16 agreements included an oath that the party would not use the pretext of minority to undermine the agreement. When parties were under twenty-five years old, it seems they were required to swear to the agreement, as Petrus de Podialibus did.[164] All examples of this oath in the set come from registers in Mallorca from between 1336 and 1349. Ten were written by Francesch Balle, three by Bernat de Olives, and one by Guillem Pera Tarasconi.[165] All apart from one had the same wording, expressing that the party was under 25 years old and that they would not use their minority to undermine the agreement. The one agreement separate from the set instead stated that the party was under 25 at the start of the agreement rather than at the end alongside the oath.[166] Kelleher emphasises the lack of agency which minors possessed according to medieval law codes, even noting that minors were prohibited from giving sworn testimony.[167] Riesenberg too notes that there was a general warning in the *ius commune* that transactions with minors be conducted on a 'footing of justice'. Protection of a minor could be evaded through a renunciation of the *beneficium minoris aetatis* and the *Senatus consultum Macedonianum*.[168] However, there are no examples of a renunciation phrase in relation to minority in the set. Instead, we find minors specifically swearing oaths in relation to their age, breaking with expectations.

Oaths related to minority were also used in agreements between family members. Bartholomeus Cortessi, for example, took an investment from his mother, Philipa, for trade in Flanders.[169] Cortessi swore not to use his minority status, at 16 years and therefore under 25

[163] ACM, PRT-14545, 89v1.
[164] Ibid., 116v1.
[165] Ibid., 116v1, 119v3-120r; ACM, PRT-14546, 21r1; ACM, PRT-14566, 41r; ACM, PRT-14564, 16v1-17r, 54v-55r, 83v-85r, 100v, 116v1, 128v2-129r, 129r, 143r-143v, 151v-152r, 165v2-166r; ACM, PRT-14569, 52v-63r.
[166] ACM, PRT-14564, 54v-55r.
[167] Kelleher, "Law," 357, 364.
[168] Riesenberg, "Roman law," 209.
[169] ACM, PRT-14564, 165v2-166r.

('sum minor xxv annis major cum sexdecim'), to undermine the agreement.[170] The inclusion of an oath in an agreement between mother and son may suggest it was a legal requirement to include the phrase when a minor was engaging in business rather than a choice. All parties recorded as under 25 years old, swore an oath related to their minority. The age of parties were not typically recorded and there is no record of a requirement that minorities swore an oath in relation to their minority status. If a choice, the inclusion of the oath may speak to elevated concerns that the legal system could be used to undermine agreements, even within families, where we might expect greater levels of trust to be present.

Questions of power and authority become particularly important when we consider oaths which were made by women. There are five documents in the set which included oaths made by female parties, four individually and one as a co-party with a husband.[171] On 11 April 1242, Berengarius and Bernarda Roberti swore an oath to Arnaldo de Tuguriis that they would invest his £6 in a trading voyage to Al-Andalus: 'hoc ambo Juramus'.[172] The four female oaths were all made by wives who were co-parties to the agreement with their husbands. On 7 March 1243, Nicolaus and Ermessendis Boverti took an investment of goods from Ugoni Bocher of Marseille worth 300 silver bezants for a voyage to al-Andalus. Ermessendis, alone, swore to the agreement at the end: 'et hoc juro Ego Ermessendis'.[173] There was no mention of *fides* or *fidelis* in the agreement and neither Nicolaus nor Ermessendis Boverti signed the document or were recorded to have signed other copies. Similarly, on 25 September 1242, P. Scriptor de Passatello and his wife Margarita took an investment of 40 silver bezants from Nicholosus Brusendo for a trading voyage on a boat owned by B. Burgeti. The agreement ended with two named witnesses followed by 'Et Juro ego Margarita'.[174] The words appear to have been added after the main body of the text (Figure 5.5). It was not normal for an oath to

[170] Ibid.
[171] ARM, ECR 342, 91v5, 105v2, 105v3, 166r4-166v; ARM, ECR 343, 169r1; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 5.
[172] ARM, ECR 342, 91v5.
[173] Ibid., 166r4-166v.
[174] Ibid., 105v2.

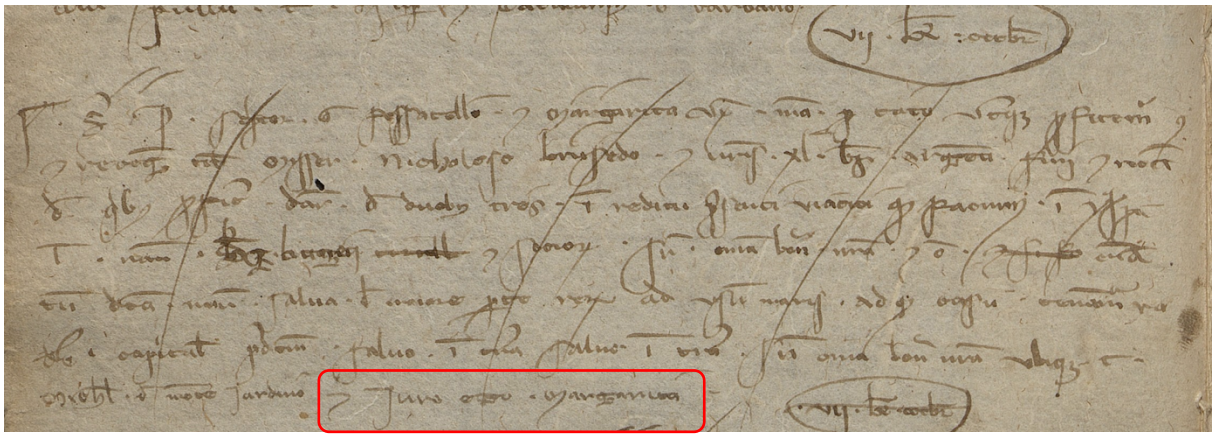


Figure 5.5: ARM, ECR 342, 105v2.

be recorded after the witnesses to the contract. Like the previous example, there was no mention of *fides* or *fidelis* in the agreement and neither P. nor Margarita Scriptor de Passatello signed the document or were recorded to have signed. On the same day in the same register, Michaelis and Bartholomea de Monte Jardino took an investment of 40 silver bezants from Nicholosus Brusedo for a voyage to Al-Andalus in a ship owned by Burgeti. This agreement similarly made no reference to *fides* or *fidelis*. The agreement ended with Bartholomea, alone, swearing: 'hoc juro ego Bartholomea'. [175] Like the previous agreement, the text of Bartholomea's oath appears to have been added separately after the witnesses (Figure 5.6).

Oaths by only the female party in the agreements suggest that women required additional reputation-building techniques, forming obligations with God as witness which

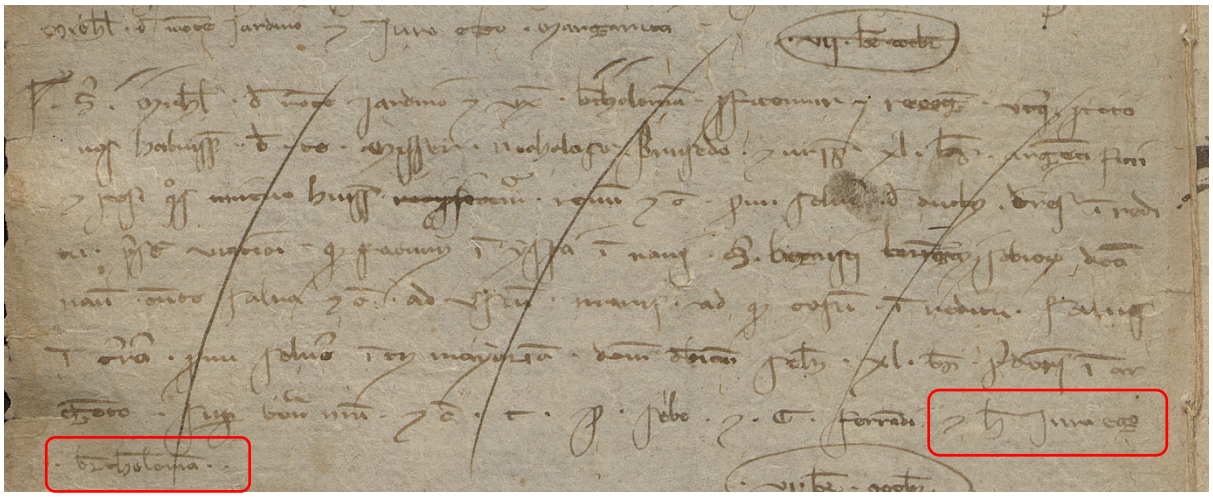


Figure 5.6: ARM, ECR 342, 105v3.

[175] ARM, ECR 342, 105v3.

added to the integrity of the women in their business agreements. Women appear to have been perceived as less trustworthy than the men in the same agreements. They were likely to be the only women in the notary's office when the agreement was made. Not only did the inclusion of oaths by women place them in a more subordinate position when compared with the men in the agreement, they were also already in a position of decreased agency when the agreement was being written.

Sometimes, an oath of a minor was recorded at the end of a document, suggesting that the women swearing oaths were considered to have a similar minority status. Periconus Cenderii was the only party to swear an oath in relation to the formation of a partnership with Jacobus Canyeles and Paschalis de Englada. A series of agreements written by the notary Bernat de Olives recorded the formation of a complex relationship between the three men. In one agreement, Canyeles and Cenderii recognised their debt to Englada worth £2100. The document began with an acknowledgement that Canyeles was over 25 while Cenderii was under 25 years old: 'Jacobus canyeles concedens me esse maiories viginti Quique annis et ego Periconus cenderii minor viginti quinque annis maior cum viginti duobus annis' ('Jacobus Canyeles conceding that I am over 25 years old, and I, Periconus Cenderii, under 25 years old, at 22 years').[176] The document then ends an oath made by Cenderii, recorded in a short manner with no details (Figure 5.7). As Cenderii was the only one making an oath, out of the three

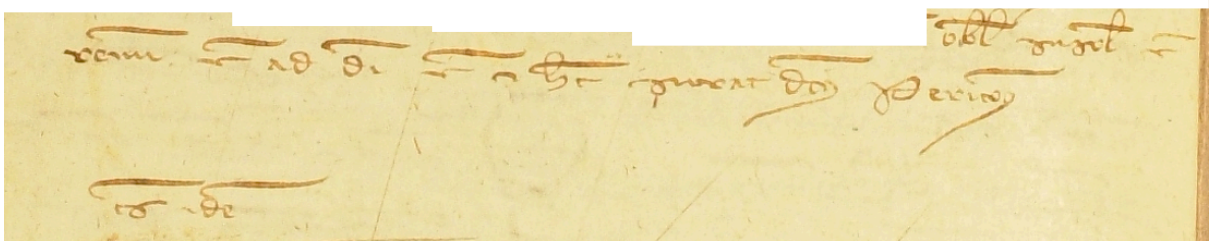


Figure 5.7: Detail of ACM, PRT-1450, 114r-114v.
'obligamus in solidum etc. Renunciamus etc. Ad dei etc. et hoc jurat dictus Peruconus. Testes idem'

[176] ACM, PRT-14540, 114r1-114v.

men involved in the agreement, his minority status was likely the cause. It was not an oath specifying that he would not use his age against the agreement, but instead that he would carry out the agreement; he was swearing to the contract ('hoc jurat'). Like the women in the examples above, Cenderii was singled out, and perceived to be less trustworthy than the men above minority age in the same agreement.[177]

In contrast, some women may have held an important position within a community and added security to the agreement through their involvement. In an agreement notarised on 2 August 1239, the wife of a party played a particularly important role, despite not being party to the contract. Guillelmus Mercerii de Cumba Ermeena and Petrus de Quadris established a partnership in order to trade across sea and land. The two men did not swear oaths to the agreements. However, the text ended with an oath by Guillelmus Mercerii's wife, Maria de Villa Germa: 'hoc iurat domina Maria'.[178] Guillelmus Mercerii stated at the beginning that the agreement was being made 'de consilio et voluntate Marie de Villa Germa, uxoris mee' ('with the counsel and consent of my wife, Maria de Villa Germa'), though she was not a party to the agreement as we see in other contracts involving wives. The village called 'Villa Germa' does not appear in any other agreement, making any wider conclusions about the reputation of Guillelmus and his wife Maria difficult. However, the need for Maria to both provide consent and swear an oath on behalf of Guillelmus suggests that the latter did not have a strong reputation and benefited from the integrity of Maria.

Most agreements did not make reference to an oath; the inclusion of an oath seems to have been a choice by the parties, even perhaps those related to minority status. In one agreement an oath was crossed out. On 13 September 1242, the notary crossed out the text of an oath made by B. Burgeti to P. Marimero (Figure 5.8).[179] It is unclear when in the contract creation process such a change would have taken place. Considering the written agreements

[177] Ibid., 133v-114r.
[178] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 5.
[179] ARM, ECR 342, 102r1.

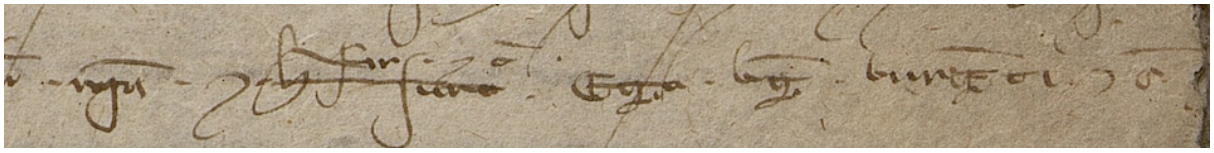


Figure 5.8: Detail of ARM, ECR 342, 102r1.

to be accurate records of the words and actions that really happened at the time of creation, presumably the parties did not actually swear an oath, otherwise it would have been recorded. The notary may have assumed that an oath was going to be made, though that was a large presumption given that most agreements did not include an oath. This may represent the decision by the parties to not include an oath as part of the agreement after discussion of some form, suggesting that the inclusion of an oath was negotiated.

Long-term agreements in the form of partnerships included more oaths; there are 27 instances of oaths in partnership contracts in the set. 18 of these were not about the issue of minority. Out of 66 total partnership agreements, this presents a large proportion (27.3%) in which an oath unrelated to minority was sworn. Compared to the proportion of agreements which involve the verb 'jurare/iurare' in some form in the whole set, 8.5%, partnership agreements made much more use of oaths than *comanda* contracts. The partnership agreements which included an oath and were written in Mallorca tended to include the oath in a brief form, such as 'et juramus etc.'[180] As previously noted, the inclusion of additional phrases to build trust through person management in a partnership agreement is not greatly surprising given that these agreements frequently lasted a longer period of time than single investments and involved greater sums of money. These oaths were theoretically between equals, as parties took on an equal obligation within the partnership, presenting the use of horizontal person management to strengthen the relationship.

In contrast, service agreements frequently used oaths to establish a decidedly unequal relationship between the parties, limiting agency and future action for the serving party. There

[180] ARM, ECR 343, 205r1.

are 17 service agreements in the set, presenting some of the most intense bonds, using terms of faithfulness and incorporating physicality into promises through elevated performativity. Men promised to serve the leader of a trading voyage, frequently for a set period. As shown in section 5.2, on 29 April 1349, Johannes Mellach promised to serve Johannes Andreae in his voyage to collect coral for one year and allowed Andrea to apprehend him wherever he was, without legal proceedings if he did not serve for the required period.[181] Similarly, on 10 March 1348, Bernardus Martini agreed and promised with a solemn stipulation ('sollempne stipulacionem convenio et promito') to serve the merchant Bernardus de Stago for the next one year ('hinc ad unum annum primo et continue venturum'), sailing with him, doing lawful and honest business by day and night ('navigando vobiscum et alia vestra negotia licita et onesta faciendo die noctuque secundum posse meum').[182] Martini promised to 'be faithful, loyal, diligent, solicitous, and attentive to seeking profit and avoiding loss' ('ero […] fidelis et legalis diligens sollicitus et intentus de lucro quirendo et dampno evitando'). Martini then swore homage to Stago, 'with mouth and hands' ('facio vobis homagium ore et manibus comendatum etc'). Indeed, service agreements frequently mentioned actions as a part of the promise to service. In 1241, G. Corredoris kissed the hands and forehead[?] of Poncius de Frexeneto: 'tibi osculonitus fui manus tuas et pretens[?] ad hoc quod ego convenio servire unum mensem in Valencia' ('I kissed your hands and forehead[?] to this that I agree to serve for one month in Valencia').[183]

The use of hands and kisses was a common part of the swearing of fealty in the medieval West as a part of the oath of vassalage, an unequal relationship.[184] An agreement written on 10 April 1314 by Pere de Torre stated that an oath of homage made in this manner was common to Catalonia and part of the Catalan customs: 'faceo vobis homagium ore et

[181] ACM, PRT-14564, 16v1-17r.
[182] AHPB, Jaume Ferrer 19/3, 85v.
[183] ARM, ECR 342, 35v3.
[184] J.E.M. Benham, *Peacemaking in the Middle Ages: Principles and practice,* (Manchester University Press, 2010), 90-91; Hyams, "Faith"; Débax, "Oaths," 174.

manibus quod predictis iuxta usacitas [*sic*] Cachalonia' ('I make homage to you with my mouth and hands according to the customs of Cachalonia').[185] These oaths echo the language found in oaths of fealty between vassals and lords, which created ties of dependence, normally formed through the clasping of hands and a kiss.[186] One service agreement written by an unknown notary in 1259 even compared the relationship being created to lordship, though making it clear that this form of service was slightly different: 'de hoc facio vobis homagium ore et propris manibus meis tanquam domino meo' ('I offer you homage with my words and my own hands, as if you were my lord').[187] The practices of oath-giving in service agreements in the set fit with the expectations of lordship and vassalage in Western Europe more generally.

In contrast, a small number of agreements explicitly stated that an oath was not needed. Thirteen agreements stated that plain words or simple words were the basis of trust, sometimes adding that an oath had not been made. All but two instances were in *comanda* agreements.[188] These two anomalies both involve Jewish parties and so are examined in chapter 7. A similar phrase has been identified by McHaffie in French warranty obligations.[189] The small number of agreements in the set stating that plain words or simple words were the basis of trust suggests that a minority of relationships required minimal risk or person management from the document. Instead, the trust work of the document relied on a preexisting relationship or confidence between the parties.

The phrase was used mainly in relation to the repayment of an investment and the division of profit and expenses. With this phrase, trading partners presented the investing partner with a high level of trust, allowing the former to conduct the financial affairs of the

[185] AHPB, Pere de Torre 6/1, 3r.
[186] Benham, *Peacemaking*, 90-91.
[187] ARM, ECR 345, 120r1.
[188] ACM, PRT-14569, 34v-35r; ACM, PRT-14564, 45v1-46v, 51v-52v, 90v2-91r, 154v-155r; ARM, ECR 344, 75v2-76r; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, docs. 9, 70; ARM, ECR 342, 128v1, 202v3; AHPB, Pere de Torre 6/3, 42r-42v; AHPB, Jaume Ferrer 19/8, 1r-1v.
[189] McHaffie, *Warranty Obligations*, 43-44.

business without the need for oaths or witnesses to back up their position. For example, on 17 July 1340, Nepolatanus Ponto of Naples received goods from Paganino de Butzuhel of Genoa in Mallorca. Ponto agreed to cover any expenses, charges, or damages faced by Butzuhel, believing his claims on his word alone, without witnesses or oaths ('credatur vobis vestro solo et simplici verbo absque testibus et juramento').[190] On two occasions the phrase contains slightly different words: 'absque placito, sacramento et testibus' ('without litigation, oath, or witnesses').[191] One *comanda* stated that the investing partner was to be believed 'without any other form of proof required' ('super quibus credatur vobis et vestris plano et simplici verbo vestro, nullo alio genere probacionis requisito').[192] The agreement was written by Pere de Torre in Barcelona for an agent, Jacobus Blancha of Cagliari,[193] working for two merchants from Perpignan, taking an investment from two merchants from Narbonne.

These phrases were an additional security for the investing partner, stating that the travelling partner would have to trust their word without any other backup if they claimed to have suffered from expenses or damages. While this phrase suggests that the parties had a relationship based on a high level of trust, which can be suggested due to the forgoing of any witnesses or oaths, it also presents a distinct relationship of power between the two parties. The trading partner was obliged to trust any claims by the investing partner of inadequate payment or expenses. It also suggests the importance of verbal agreements as a part of the creation of these relationships, with the writing of the agreement as a particular part of trust-making.

Indeed, a decision to swear an oath was probably not taken lightly. Oaths were considered problematic in theology and canon law. Biblical prohibitions on oath-taking emphasised the sacred nature of the oath, calling God as a witness to a promise made

[190] ACM, PRT-14564, 45v1-46v.
[191] ARM, ECR 344, 75v2-76r; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 9.
[192] AHPB, Pere de Torre 6/3, 42r-42v.
[193] Abulafia identifies 'Caucum Liberum' as Cagliari in Abulafia, *Mediterranean Emporium*, 171.

between humans.[194] Forrest notes that in the Sermon on the Mount, Christ's suspicion of oaths was presented; instead of swearing one should say 'yes' or 'no' and then live by the utterance.[195] Saccenti argues that the oath became less sacred in the 11th century with the Gregorian Reform. The Italian scholastic theologian Peter Lombard (1100-1160) considered the necessity of an oath to affect its status, arguing that swearing without necessity was a sin as the calling of God as a witness without need was an abuse of the supreme role of God; oath-taking was never good in itself but could be necessary, which made it legitimate.[196] The Franciscan philosopher John of la Rochelle (1190-1245) considered that oaths could be proper in secular relationships, as a way of granting trust between humans, by calling on God as a witness to the obligation. The breaking of an oath was therefore a sin because one was lying before God. While the oath was still not considered good, it was 'necessary for overcoming human weakness.'[197]

A breach of contract, when an oath was included, involved a *laesio fidei*, breach of a pledge of faith, which was a sin of perjury.[198] Breaking an oath could greatly damage one's ability to lead a normal life afterward, ruining a reputation and marking one out as untrustworthy.[199] Forrest notes that swearing oaths too easily could lessen the credibility of an individual and even lead to excommunication.[200] The decision by parties to make an agreement on plain words, rather than swearing an oath, was a statement about the intended future trust in the relationship; the parties did not need to rely on the dangers of an oath to create trust in the agreement. Conversely, the decision to swear an oath placed the religious and secular reputation of the oath-taker at risk.

[194] Saccenti, "Positive Law," 268.
[195] Forrest, *Trustworthy Men*, 42.
[196] Saccenti, "Positive Law," 267.
[197] Ibid., 272.
[198] Zimmermann, *Law*, 542; Saccenti, "Positive Law," 269.
[199] Hyams, "Faith," 139.
[200] Forrest, *Trustworthy Men*, 45.

McHaffie presents phrases referring to 'plain words' and 'oaths' on opposing ends of a spectrum of formality and sacrality, suggesting that phrases of plain words were less formal and less religious in nature, and perhaps therefore, less significant phrases in the creation of an obligation.[201] However, following Débax's argument, the contracts here suggest that a simple pledge of good faith could be more powerful than the oath.[202] In the creation of agreements relying on the 'plain words' of the party, we can see a complex relationship dynamic being formed; one of heightened trust yet greater instability for the travelling partner, a theme that continues if we delve deeper into questions of risk and uncertainty, as well as how concepts of faith and confidence were involved.

The swearing of oaths was a character-management technique which assured the investing party that the travelling party had more motivation to fulfil their obligations, providing an additional level of punishment should the travelling party fail in their obligations, bringing religious punishment, excommunication, and possibly community punishment, in terms of reputational damage, to the travelling party. Oaths were frequently used to create particular imbalances of power between the travelling and investing party, especially in service agreements. In contrast, contracts made on 'plain words' implicitly stated that the trust work done by the swearing of an oath was not needed.

[201] McHaffie, *Warranty Obligations*, 44.
[202] Débax, "Oaths," 171.

5.5: Partnerships built on promises

Trust work may also have varied by the type of contract being created. As outlined in chapter 1, partnership agreements tended to form a long-term relationship between the parties, sometimes lasting years. They normally formed the basis for a series of ventures, therefore including a greater amount of risk for the parties than one-off or short term *comanda* investments. As such, they may have required greater levels of trust work. The inclusion of both action and disposition promises, faith, and honesty, would all, therefore, be expected to appear more frequently in this type of document.

Partnership agreements did tend to include more language of faith and truth, often spelling out the relationship in greater detail than *comanda* agreements. There are 66 partnership contracts in the set. 20 of them included an agreement to tell the truth (30.3% of all partnership agreements) compared to 24 in other types of contract (1.8% of the rest of the set). 32 included a promise to be faithful (48.5% of all partnership agreements) compared to 85 in other types of contract (6.2% of the rest of the set). Both of these represent a much higher proportion than in the whole set, showing that on average, parties in partnership agreements made more use of honesty and faith language to set up their relationships; there was more trust-building work going on in *societas* agreements than those relating to one-off voyages.

Zimmerman states that *societas* agreements were 'firmly rooted in the precepts of good faith' with 'certain overtones of a distinctly fraternal nature.'[203] While *comanda* agreements sometimes contained a promise from the travelling partner to the investing partner to be faithful and lawful (79 times out of 117 total contracts (67.5%) which included the phrase), partnership agreements tended to include the promise in a reciprocal manner: each partner promised the other to be faithful and lawful. For example, on 27 November 1242,

[203] Zimmermann, *Law*, 454.

Bernardus Rabaza and Guillelmus Blader promised each other, in good faith and lawfully, and in all things to speak the truth and not deceive in anyway, to be faithful and lawful in good faith ('Ita promittimus esse alter alteri bona fide et legalitem portare et in omnibus verum dice et non in aliquo decipere esse fidelis et legalis omnibus bona fide').[204]

The partnership agreements used a variety of character-management techniques to build clear expectations for future behaviour, combining a variety of phrases which might appear alone in other types of contract. On 24 October 1329, Matheus Civaderii, formed a partnership with Bernardus Civaderii (his brother), Bernardonus Civaderii (his son), and Guillelmus de Cigis which was to last for two years and continue thereafter as long as they were all in agreement.[205] They agreed and promised to be faithful, lawful, diligent, and attentive partners to each other for the good and benefit of the said partnership ('convenimus et promittimus […] erimus nobis ad invicem fideles socii et legales et solliciti, diligentes et intenti de bono et utilitate dicte societatis'), to speak and write the truth to each other in all matters ('premissis dicemus et scribemus nobis ad invicem veritatem'), and to follow good and correct faith, 'not deviating in any way from the path of truth', abandoning fraud and deceit ('sequemur bonam fidem et rectam, non recedentes in aliquo a tramite veritatis; et quod omnis dolus malus et fraus inde haberunt'). These were a series of non-verifiably deliverable promises which spoke in detail of the expected behaviour of the partners going forward.

The greater inclusion of trust work through person management phrases is particularly evident in a series of agreements between Guillelmus Rastaldi and Johannes de Bagnariis, all written by Guillelmi de Boscho in Barcelona. Bagnariis was from a prominent mercantile family which appear multiple times through the set. Bagnariis first appeared doing business with Rastaldi when, on 13 June 1264, they formed a partnership for a period of two years. The two men made a promise 'to be faithful and lawful to each other' ('promittimus esse nobis alter

[204] ARM, ECR 342, 126r1. Also, ARM, ECR 342, 80v2.
[205] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 27.

alteri fideles [et legales'), 'to carry faith with each other' ('nobis portare fidem') and to tell each other the 'pure and real' truth in relation to the partnership and its profit: 'nobis meram et puram dicere veritatem.'[206] This extended phrase, full of character-management trust work, set up the bond between Rastaldi and Bagnariis as one of ongoing honest communication, with concern that behaviour for the duration of the partnership should be reliable and honest. The partnership must have been a success as almost exactly two years later, when the agreement ended, on 28 June 1266, Rastaldi and Bagnariis formed another partnership which was to last from the feast of Saint John for one year ('observandam ac duraturam a festo sancti Johannis Babtiste proximo transacto ad unum annum') for the purposes of selling 'fustanea' (thick cotton cloth).[207] While the success of the first partnership would presumably have allowed the men to enter the new partnership with a greater level of confidence in each other, the decision to create a new contract – which was not strictly necessary according to the original partnership agreement – suggests that there was some need to get agreements in writing. Indeed, the two men again promised each other that they would mutually come to a fair and legal account ('mus nobiscum ad invicem venire ad rectum et legale compotum'), conduct business in good faith ('bonam portare fidem') and speak pure and real truth to each other ('inde nobis ad invicem meram et puram dicere veritatem'). Three years later, the men reappeared in a *comanda* agreement. On 7 May 1269, Bagnariis received an investment of £150 from Rastaldi. Bagnariis promised to use the investment for trading in the period of one year and to return the money after a year without any delay or excuse.[208] There was no consideration of continued communication, honesty, or accurate accounting. Part of this difference would appear to be the nature of an investment compared to a partnership, where the partners were not tied together so closely in business. However, it may also speak to the development of the relationship between the two men and the increased bond of trust after

[206] Ibid., doc. 9.
[207] Ibid., doc. 11; 'Fustanis' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/11097
[208] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 27.

three years of partnership. While extended positive relationships may have increased the base level of confidence between specific parties, the long-term nature of partnership agreements and the risks that they involved meant that the documents tended to do greater trust-building work.

The agreements and promises in the partnership contract were elevated by the references to the trust between the men, and the importance of honesty and faithfulness. Sheinman considers promising to be a kind of 'game', with risks involved in the action of promising.[209] By their nature, asking one party to place trust in another, there was an acknowledgement that the agreement may not be kept. By breaking a promise, a party might subject themselves to a penalty of not being trusted in the future. It was by doing what has been promised, Sheinman states, that the promisor 'preserves the trust that the promisee and/or others have in her, thereby preserving her valuable power to promise them again.'[210] Such considerations were particularly important in partnership relationships which lasted for a long period of time, with communication between the parties forming the basis of the ongoing relationship maintenance. Promising practices, such as references to faith and honesty, Sheinman argues 'promote interpersonal cooperation' and partnership agreements demonstrate their power in creating relationships of long-term trust.[211] Trust in the bonds of partnership between Rastaldi and Bagnariis was firmly based on the explicit need for honesty and open communication.

Like that of Bagnariis and Rastaldi, many partnership agreements placed particular emphasis on a form of mutual reliance and sincerity. On 12 January 1244, R. de Columbario de Perrelata, B. de Quarsavo de Gerunda, and P. Payto created a partnership from Candlemas, 2 February, ('Festum Purificatonis Sancte Maria' – Feast of the Purification of the Blessed Virgin Mary) for one year ('ad I annum completum') for trading in unspecified locations. The

[209] Sheinman, "Introduction," 12-13.
[210] Ibid., 10.
[211] Ibid., 27.

partners agreed to be faithful and lawful ('Pacerimus et sumus fideles legales') as well as, unusually, to work mutually, healthy and strongly ('colamus ad invicem nos sanos et in firmos').[212] The odd choice of the terms healthy and strong which do not appear in other phrases of the same nature suggests that the parties were particularly concerned to emphasise the strength of the relationship being created. Columbario appears in another earlier contract in September 1240 with J. de Boscho, taking an investment from B. de Felico de Tarragona for a voyage to Denia. The *comanda* document presents the creation of a very different relationship with no reference to faith, truth, or lawfulness. It as a much simpler agreement recording the investment of ten blankets ('x flassadarum') worth 15 silver bezants;[213] the *comanda* contract was doing less trust-making work.

In this, we can see that the 'type of trust, faith and loyalty that derived from and was reminiscent of the ancient fraternity' which Zimmerman identified in partnership agreements needed to be constructed, with each partner promising honesty and fidelity in relation to their behaviour and future actions.[214] The long-term partnership agreements included a greater number of trust-making phrases than one-off or short term *comanda* investments and demonstrate the ways in which parties negotiated trusting relationships in order to minimise risk.

[212] ARM, ECR 342, 232r2.
[213] ARM, ECR 343, 278v2.
[214] Zimmermann, *Law*, 457.

5.6: Conclusion - 'promitto de toto dicere veritatem'

Overall, promises were very common in the contracts, with an explicit promise phrase included in 52.6% in the set. Seligman places ideas of trust and promises in a timeline of increasing personal interests, so that concerns with promise-keeping were an early-modern phenomenon tied to increasing individuality. He identifies the 'transition' from medieval to early modern as a time when there were increasing relationships between strangers without ties of affinity, kinship, or shared belief. Practices of promising, Seligman argues, developed to replace these closer, communal ties.[215] However, this evaluation of the use of promises in the creation of trusting bonds undermines such ideas. The Catalan contracts demonstrate that this was not the case; promise practices were complex in high-late medieval Barcelona and Mallorca and were frequently used to create and maintain relationships between genders and between strangers.

The notarial documents demonstrate the great variety of ways in which mercantile parties used trust work in the form of character-management techniques to create trusting relationships. The type of relationship being formed, a *comanda* investment, a partnership, or form of service, affected the language which was included. All three used a variety of obligations and promises, whether implied or explicit, to cater the agreement to the parties. Legal institutions and codes were used to bolster the security of the relationship being formed; parties made choices to avoid courts, to renounce potential lawful challenges to the contract, and promises not to commit fraud showing that medieval merchants and investors were aware of their position within the legal institution and, with the help of the notaries, able to use the framework to suit the individual relationship being created. In all types of contracts, there was a shared language and practice of promising, in which honesty and loyalty were central to the building of trust. These allowed parties, mediated by the notary, to employ

[215] Seligman, *Problem of Trust*, 15.

phrases as required. Partnership agreements made particular use of a wide variety of these phrases to construct extensive expectations of future behaviour.

Chapter 6 – Risk and discretion: uncertainty management as trust work

6.1: Introduction

Catalan notarial contracts embraced chaos. The position of notaries and their documents in the law (explored in chapter 2) could lead to interpretations of these agreements simply as legal contracts with binding clauses. However, such interpretations fail to explain the extensive use of indeterminate and ambiguous clauses relating to risk and uncertainty. The parties in the documents accepted the risks that trade presented, reacting with different levels of flexibility and control.

Risk and the unpredictable outcomes of voyages were written into the texts. Parties to contracts acknowledged the uncertainties that came with long-distance voyages on the medieval Mediterranean. As shown in chapter 3, trading on the Mediterranean was a dangerous and risky business and much could not be controlled or predetermined.[1] Kohn notes that most commerce was venturing, or the sending of goods to distant markets to be sold there at an uncertain price; shipping to order was virtually unknown. Market risk, the risk of loss from movements in market prices, was much greater than it is today.[2]

Parties took different approaches to these issues. Using varied levels of trust work, some contracts specified exactly how the venture was to proceed, while others explicitly left future decisions open to the merchants undertaking the voyage, relying on their competence

[1] Goldberg, *Trade,* 115–19.
[2] Kohn, "Risk Instruments," 1.

and reputations. These different approaches occupy a spectrum from high levels of discretion to high levels of constraint. The freedom to decide what should be done in a particular situation was sometimes granted by one party to another. Other agreements limited or restricted decisions in order to prescribe certain actions or behaviours. Varied levels of discretion and constraint in the contracts created different power relations; while some parties had agency to make decisions and affect the future of the venture others had their freedom explicitly limited.

Observing discretion and constraint along a spectrum emphasises how different choices made by parties used trust work to build particular relationships. Discretion created flexibility, building a relationship with a high level of trust; one party trusted the other to make good future decisions. Phrases which imposed constraint meant that one party sought to control the future actions of another, implying mistrust and a need to pressure the party to act in a certain way. Many of the contracts did not create equitable relationships. Instead, one party was often more able to make a choice about the level of discretion or constraint that suited their situation.

The need for varied levels of discretion and constraint reveals the complexities of planning long-distances trades in the medieval Mediterranean and emphasises the long-term processes, such as ongoing communications and negotiations, which took place. Merchants often needed to be flexible as these ventures were planned, leading to many contracts using a large number of open phrases and deferring decisions to future moments. The open-endedness of contracts reflects the freedom of choice given to ambassadors by the kings of Aragon, explored in chapter 3. Rizzo argues that this gave them the ability to adapt to circumstances, supported by the legitimisation provided by the written word of instructions.[3] Ambiguity provided a needed degree of flexibility.[4] Similarly, Goldberg highlights that in their

[3] Rizzo, "Written Word," 6.
[4] Ibid., 12; Constanze Villar, *Le discours diplomatique* (L'Harmattan, 2006), 184-191.

letters Geniza merchants frequently expressed concern about the knowledge, competence, and diligence of their colleagues.[5] Though a different type of source, in which the merchants expressed their own thoughts more than in notarial contracts, the similarities suggest that explicit concern about the ability of merchants to carry out their business was common among mercantile communities as the basis of some forms of trust work.

The use of discretion and constraint implicitly or explicitly called upon varied qualities in parties, such as knowledge, ability, a belief in positive intentions, and experience. Phrases with the highest level of discretion allowed merchants to work to the best of their ability or according to their best judgement, explicitly relying on the competence and knowledge of the party. The agreements show that flexibility in the form of discretion was a common response to uncertainty and a central technique for managing risks. Such an approach can be seen in agreements involving both men and women, to different destinations with various goods and amounts of money invested. Overall, the agreements do not evidence greater trust within groups than between different groups. Instead, they show a shared understanding of risks and mechanisms to deal with long-distance trading ventures in an environment of negotiation and acceptance of unpredictable outcomes. The parties made different decisions, using different forms of trust work according to their personal relationships, to provide varied amounts of discretion and constraint with the outcome of varied levels of power and incapacity.

[5] Goldberg, "Choosing and enforcing," 31-33.

6.2: Risk and the will of God

The year 1349 was a complex year for Obertinus de Dameto, both personally and financially. Having recently lost his brother, Nicolinus, Obertinus was now acting as guardian for Nicolinus' heirs, including his son, Guertius. In 1349, Obertinus visited the notarial office of Francesch Balle in Ciutat de Mallorca three times, to record investments in long-distance commerce on his own behalf, and on the part of the heirs of his deceased brother. The first was a complex partnership agreement, while the latter two were more simple *comanda* investments.

In early 1349, Balle drew up a contract in which Obertinus, alongside Guterius de Dameto (his nephew), and Georgius de Quart agreed to form a partnership for as long as it was according to their will.[6] The three men combined their capital to create a common account totalling £2514 17s. 6d. which Georgius was to use to trade in diverse goods and merchandise which were to be 'carried, God willing, to Alcúdia and Fes' ('porto mecum nunc deo volente aput Alcudiam et Fes') in a ship owned by Bernardi Serra. Georgius promised to trade on the Barbary coast and return to Mallorca. Obertinus stated that Georgius was to be entrusted with the journey and account, 'as best guided by God': 'prout deus nobis melius administrabit'.[7] After the three men agreed on how to split the profit from the voyage and promised fair, just, and lawful behaviour, Obertinus and Georgius pledged all their goods as collateral. Finally, the agreement ended with a statement that the partnership would be subject to the risk, danger, and fortune of Obertinus and of the heirs, and of Georgius: 'ad redegum periculum et fortunam mei dicti Obertini et dictorum heredum et mei dicti Georgii per solidi et libram capitalium cuiuscumque vestrum' ('subject to my, the said Obertinus, risk, danger, and fortune and of the stated heirs, and of Georgius, by shillings and pounds of the whatever profit'). The agreed venture would take Georgius to various places, and together as

[6] ACM, PRT-14566, 1r-1v.
[7] Ibid.

a partnership, the three men accepted the risk, danger, and fortune of the enterprise, sharing it between them.

On 23 April 1349, Obertinus returned to the notary Balle, along with Georgius, to invest in a new venture Georgius was undertaking to Perpignan. Obertinus invested £400 alongside £860 on behalf of the heirs of his late brother Nicolinus, (plural heirs, not just the son, Guertius) for Georgius to take to Perpignan by ship, and to be returned in the form of fabrics.[8] This agreement also ended with a phrase in which Obertinus accepted the risk of the voyage: 'ad vestrum redegum et fortunam' ('subject to your [Obertinus de Damto] risk and fortune').

Finally, on 3 November 1349, Obertinus took part in a final trading venture, through an agreement written again by Balle. Obertinus, invested his own money, alongside that of the heirs of his brother Nicolinus again. They invested £642 6s. in a trading venture carried out by Nicolinus Scoto, to be used for commercial purposes in the regions of Valencia and Catalonia, God willing ('Deo volente, apud partes Valentiæ et Cataloniæ').[9] This time, the risk was accepted by Obertinus and the stated heirs of his brother: 'ad vestrum et dictorum heredum redegum et fortunam, secundum usum gencium atque maris' (subject to yours [Obertinus de Dameto] and the said heirs' risk and fortune, according to the custom of nations and the sea).

While 1349 saw Obertinus deal with the loss of his brother and take on the role of guardian for his brother's children and heirs, he nevertheless, agreed to take on the risk (*redegum*) of the three trading ventures, and so dealt financially with the dangers and fortunes (*periculum et fortunam*) of the unknown future ventures of which he was a part.

Risk and the unpredictable outcomes of voyages were written into the contracts as a way to acknowledge and deal with the uncertainties that came with long-distance voyages on the medieval Mediterranean. Phrases related to risk (*redegum*) were used to proportion financial risk, assuring the travelling party that they would not have to deal with potential

[8] Ibid., 82r.
[9] ACM, PRT-14566, 180v2-181r.

losses. However, they also highlighted the uncertainties that were involved in Mediterranean trade and, especially when combined with God, served to provide a form of leeway as a result of this uncertainty. The parties to agreements jointly acknowledged that they could not control every part of the venture. This was a combination of risk and character management which provided both guarantees and assurances to the parties.

Some historians and sociologists claim that 'risk' is a modern concept, only developing with the invention of insurance, credit, and banking; Guerreau states that medieval Europe was 'une civilisation sans la notion de risque' ('a civilisation without the concept of risk').[10] However, many of these documents were not only full of the concept of risk but played with the uncertainty that such unknowns provided. Words meaning risk were commonly used in notarial contracts. Piron finds the origin of the Romance/Germanic words for risk in Genoese and Pisan documents written between 1156 and 1160, in which the spelling *resicum/risicum* was used. He labels this as a term of 'maritime commercial law'.[11] In classical Latin, only the word *periculum* was used, meaning both risk and danger. The emergence of *risicum* saw the separation of risk from concepts related to danger. The term *redegum* was originally, in twelfth- and thirteenth-century Italy used in formulas to clarify the meaning of the terms *periculum* and *fortuna,* Piron argues. *Periculum* referred to a dangerous situation while *fortuna* referred to a favourable outcome.[12] Its differentiation from *periculum* indicates that *redegum* did not necessarily refer to a dangerous situation but to wider risks involved in a deal with many uncertain elements.

[10] A. Guerreau, "L'Europe médiévale: une civilisation sans la notion de risqué," *Risques* 31, (1997): 11-18. Also, Ute Frevert, "The Moral Economy of Trust, Modern Trajectories,' Annual Lecture, German Historical Institute London, (2013), 34; North, *Institutions*, 126; Seligman, *Problem of Trust*, 18.
[11] Sylvain Piron, "L'apparition du resicum en Méditerranée occidentale, XIIe-XIIIe siècles," in *Pour une histoire culturelle du risque. Genèse, évolution, actualité du concept dans les sociétés occidentales,* eds. E. Collas-Heddeland, M. Coudry, O. Kammerer, A. J. Lemaître, B. Martin (Editions Histoire et Anthropologie, 2004), 1.
[12] Ibid., 3-4.

Redegum has been understood to indicate the acceptance of the financial risk in contracts, paying for losses if the venture was unsuccessful. Piron argues that the use of the term 'supposes an actor assuming responsibility' in the face of dangerous trades.[13] Conde and De Molina, too, argue that the term was used to demonstrate responsibility, calling the phrase an 'usual clause of saving responsibility'. For Conde and De Molina, the word *redegum* was about financial responsibility which was, they state, normally taken on by the investing party.[14] Riera, too, notes that the phrase meant that the investing party only received their investment back if the venture was successful.[15] When generalising *comanda* agreements, Pryor states that 'any loss was born entirely by the investing partner unless the travelling partner had also invested capital, in which case they bore liability for loss pro rata as they had invested.'[16]

Piron finds that the first uses of *redegum* were part of a specific idea which attributed possible future financial charges to a legal subject, in relation to an uncertain entrepreneurial endeavour, so that it is used in a phrase distributing risks in a monetary fashion between contractors,[17] though he does not provide an example phrase for this argument. Piron finds that the word has its origin in the Arabic *rizq* (رزق). In classical Arabic *rizq* refers to 'provision' or the 'share of goods that God attributes to each man'.[18] This then leads to an abstract meaning of 'chance' or 'favourable chance'.[19] The earliest use of the Latin term that Piron has identified is from the oldest surviving notarial cartulary in Europe, kept by the Genoese notary, Giovanni Scriba, in 1154-1164. The register contains a trading venture carried out '"at the risk" of the sponsor (ad tuum resicum), Piron observes, from Genoa to Valencia, then to Alexandria.

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[13] Ibid., 5.
[14] Conde y Delgado De Molina, "Los Llull," 381, 384; Pryor, "working method," 434.
[15] Riera, "Beginnings," 222.
[16] Pryor, "working method," 434.
[17] Piron, "resicum," 5.
[18] Ibid., 9-10; رزق in The Arabic Lexicon. "Lane's Arabic-English Lexicon," accessed 11 September 2024, http://arabiclexicon.hawramani.com/william-edward-lane-arabic-english-lexicon/; see also, Hunt and Murray, *History of Business*, 61.
[19] Piron, "resicum," 9-10.

The term appeared in the register 15 times and is normally alone though occasionally doubled with *fortuna*.[20] Piron argues that the use of the term, in a phrase similar to *ad meum/tuum/vestrum/nostrum redegum* states which party in the contract will take on the financial consequences of the trading operation. Should things go wrong, the stated party bore the financial risk. He argues that this was normally the sponsor of the operation (investing party). In partnership contracts he finds that the risk is either allocated to the partnership itself or split between the partners.[21] Interestingly, he also stated that 'the risk of the pledged goods is normally assumed by the contributor and that it is the investor who is implied when the formula used speaks of an operation carried out "at the risk of the sea" (ad resicum maris)'. In other words, Piron argues that the phrase 'ad resicum maris' implies that the investing party bore the burden of the financial risk.[22] Kohn, too, sees the phrase as a proportioning of financial liability.[23] Elsewhere, Piron states that 'generally, *fortuna* referred to the divine providence which we hope will grant a favourable outcome to the journey undertaken, while *resicum* relates to the sponsor assuming the financial consequences of the operation.'[24] Piron's argument is then that *fortuna* was related to a general hope of success while *redegum* was related to a specific financial arrangement.

However, words in these agreements took on multiple meanings and were used in a variety of ways. Both *redegum* and *fortuna* played complex roles, forming part of a binding acceptance of the costs of the voyage (one taking on the monetary risks and fortunes), and invoking wider concepts of uncertainty. Inclusion of risk, danger, and fortune words acted to acknowledge that the contracts themselves were not stable and could not take into account the unknown conditions in which the trades took place.

[20] Ibid., 7.
[21] Ibid., 10.
[22] Ibid., 13.
[23] Kohn, "Risk Instruments," 5, 8.
[24] Piron, "resicum," 10.

The term risk, in the form *redegum, resegum* or *risicum*, appeared in a large number of documents in the database (352 agreements or 24.6%) and uses of the phrase remained stable through the period, appearing in the same form in ECR 342 written in 1243[25] and PRT-14566 written in 1349.[26] The loose standardisation (loose because there are some variations) suggests that there was a shared understanding of the way in which the term *redegum* was being used in the phrase. There was also an abbreviated form of the phrase: 'Hec tamen comanda etc.' ('this investment etc.') which would have referred to the same phrase. The proportioning of financial risk was a common factor.

That most did not include a phrase proportioning risk suggests that there was a conscious choice about this form of risk management for the parties. There was no one single notary or notarial office using the phrase. The parties were choosing whether the phrase was included. The word appeared in the form *redegum* most often. Most of these stated that the investing party accepted the risk alone.

Occasionally, the phrase was directly tied to the apportioning of financial liability through a phrase stating that the money was to be divided. The first subsidiary agreement related to a partnership between Matheus Civaderii, Bernardus Civaderii, Bernardonus Civaderii and Guillelmus de Cigiis recorded an investment in the partnership by Jacobus Marqueti worth £800. The partners stated that the investment would be used along with the money and goods of the society as one common fund, 'according to the will of God' ('ad voluntatem Dei') and that the risk and fortune would be shared between the investor and the partners, according to the proportion of shillings and pounds: 'ad redegum et fortunam nostri et vestri et aliorum participum dicte societatis per solidum atque libram' ('according to the risk and fortune of us, you, and the other participants of the said society, by the shilling and the

[25] ARM, ECR 342, 204r3.
[26] ACM, PRT-14566, 82r.

pound').[27] The risk was to be shared according to the share of capital which each man invested. The phrase was explicitly tied to the investment of money and goods.

The apportioning of risk through *redgum et fortunam* phrases was considered by one notary in 1348 as customary practice. In an agreement written by Guillem Pera Tarasconi, G. Fabregati appointed Berengarius Fabragantus as his agent, to navigate and act as a patron for his ship, which a fellow citizen of Mallorca, Castaylet, was commanded to sail to Sardinia.[28] The agreement was made 'ad risicum videlicet et fortunam mei, ut moris est' ('subject to my risk and my fortune, as it is customary'). The risk and fortune were that of Fabregati, the investing party, who lent his boat for the voyage. *Redegum* and *fortunam* were considered to be custom (*mos*), demonstrating that the apportioning of risk in this way was seen as a standard way of dealing with uncertainty in these long-distance trade agreements, at least by this notary.

Nevertheless, the term *redegum* (risk) bore wider connotations of uncertainty, especially when combined with *fortuna* (fortune), *periculum* (danger), and *voluntate dei* (the will of God) in various forms. Given the great variation in the combinations of words, with no clear trend according to date or notary, we may conclude that the parties would have had input into whether the different words were included. The terms *redegum* and *fortuna* often appeared side by side and were part of the same phrase; *redegum* appeared alongside *fortuna* in 252 agreements (71.6% of those containing *redegum* phrases). Parties accepted the 'risk and fortune' of the venture.[29] The phrase apportioned the financial risk, but did not apportion the profit, or fortune of the voyage. The split of profits was normally stated separately in the agreements, commonly 3:1 in *comanda* investments, or split equally or according to the shared input of capital in partnerships. The split of profits 3:1 was called the *quart diner* or 'fourth coin', denoted in the agreements normally as 'ad quartum lucri' or 'quartum

[27] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 27.
[28] ACM, PRT-14569, 81v.
[29] ACM, PRT-14564, 17v1-18r.

denarium'.[30] While *risicum* apportioned the financial risk of the voyage, combination with *fortuna* associated the phrase with the uncertainties of the future. This was not about apportioning profit in the case of a successful voyage but acknowledging the unknowns that came with long-distance trading.

Likewise, combination with 'ad voluntatem dei' ('at the will of God') tied the phrase to wider unknowns. Understanding God's role in future events and decisions was central to these phrases. Much learned medieval discussion of future contingents stemmed from Chapter 9 of Aristotle's treatise *De interpretatione* (*Peri hermeneias*) in which he denied that God has knowledge of any particular future events.[31] Boethius's (c.480–524) Latin translation of *De interpretatione* included a long commentary in which he discussed the place of the knowledge of God in questions of the future. Boethius stated that God 'knows future events as happening contingently' so that 'he does not ignore the possibility that something else might take place.'[32] In his treatise *Consolatio philosophiae*, Boethius argued that God is atemporal and has the totality of changing history present to him. God's knowledge is thus not foreknowledge since it is not temporally located, but the predictions of future contingents are true or false from the point of view of God's eternal knowledge of the possibilities.[33] Aristotle's and Boethius' views became the basis for later discussion by medieval philosophers such as Peter Abelard (1079-1142), Thomas Aquinas (1225-1274), and John Duns Scotus (d.1308). Abelard argued that 'all propositions about future contingencies are true or false' as all propositions are known to God, but inaccessible to humans without 'supranatural illumination.'[34] Aquinas argued that God 'has an immediate knowledge of all

[30] ARM, ECR 343, 99v1; AHPB, Pere de Torre 6/2, 171v1.
[31] Simo Knuuttila, "Medieval Commentators on Future Contingents in De Interpretatione 9," *Vivarium* 48, no. 1-2, (2010): 76; Simo Knuuttila, "Medieval Theories of Future Contingents", *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition), eds. Edward N. Zalta & Uri Nodelman, accessed 11 September 2024: https://plato.stanford.edu/archives/fall2023/entries/medieval-futcont/; John Marenbon, *Medieval Philosophy: An Historical and Philosophical Introduction*, (Routledge, 2006), 347.
[32] Knuuttila, "Medieval Commentators," 91; Knuuttila, "Medieval Theories."
[33] Knuuttila, "Medieval Theories."
[34] Knuuttila, "Medieval Commentators," 86.

things and their relative temporal order, though none of them is past or future with respect to His cognition.'[35] Scotus also argued that God could see all future possibilities.[36] Whether the future possibilities were certain and known to God, or God knew what various possibilities they were, both were unknowable to humans and understood by God alone.

The 'will of God' was closely tied to ideas of risk in the documents. While only 20 agreements contained *periculum* (5.7% of 352 *redegum* agreements), 192 of the agreements with *redegum* phrases included 'ad voluntatem dei' in some form (54.5% of *redegum* agreements). Like those agreements which included *fortuna* alongside *redegum* (252 agreements or 71.6% of *redegum* agreements), this was a significant proportion. There were also a few occasions where the will of God and fortune were used without *redegum*.[37] Rather than apportioning risk based on calculations of future possibilities, contracts referenced the will of God and fortune in an acknowledgement of the uncertainty and unknowability of the future for the parties involved. The environment, the weather, the prices at destination ports, the success or failure of the voyage were all subject to future possibilities known only by God.

Indeed, three agreements included the phrase 'ad fortunum dei', tying the idea of risk to the wider possibilities of environmental unknowns and outcomes that only God knows.[38] This was not asking God to pay the financial costs in the case of problems, but acknowledging the unknowns of trade. For example, on 19 April 1240, P. de Palacio took possession of 266.5 baskets of silk fabric ('pannis sini'), worth £14 6s. from B. Salicrup, for sale in Algiers, or in whichever port to which Palacio decided to travel.[39] He agreed to carry out the voyage and sale, 'ad tuum resegum at ad fortunum dei' ('subject to your [Salicrup's] risk and the fortune of God') and split the profits according to the normal 3:1 division ('ad quartum numerum de

[35] Knuuttila, "Medieval Commentators," 91; William Lane Craig, *The Problem of Divine Foreknowledge and Future Contingents from Aristotle to Suarez*, (E.J. Brill, 1988), 99.
[36] Knuuttila, "Medieval Commentators," 92.
[37] ARM, ECR 342, 126r1; ARM, ECR 343, 274r4.
[38] ARM, ECR 342, 8r3, 9v1, 21v3.
[39] ARM, ECR 342, 9v1.

lucro').[40] The voyage undertaken by Palacio was defined as according to God's fortune; only God knew what the outcome would be. Yet Salicrup took on the financial risk (*redegum*). The pairing of the proportioning of financial risk alongside a statement which placed the outcome of the voyage at God's fortune, further suggests that *redegum* was playing a more complex role in the agreement. God's fortune could not take on the financial risk, and yet it was placed in comparison to the risk which was undertaken by Salicrup, the investing party. *Redegum* in the agreements served a dual function, placing the agreements into a wider environment and acceptance of uncertainty. While some phrases in the contracts could hold parties tightly to their obligations, the acceptance of uncertainty provided space for things to go wrong, and lightened the pressure between them.

One notary, Bernat de Olives, combined the idea of risk with God in an unusual fashion, placing *redegum* in God's possession and heightening the emphasis on the uncertainty of the outcome of voyages. Bernat de Olives used *redegum* in a 'standard' form in two of his registers. In PRT-14545 (1335) there were nine trade agreements in which three voyages were at the will of God and apportioned the risk and fortune to one party.[41] In PRT-14546 (1336) there were three trade agreements, all of which were at the will of God and apportioned the risk and fortune to one party.[42] However, Olives took the phrase in a different direction in his 1318 register in which there are 28 trade agreements; three trade agreements included the phrase 'ad dei resegum' ('subject to the risk of God').[43] One explanation for this aberration may simply be that it was a mistake. In entry 211r3, for example, the phrase comes at the end of the document amongst a series of abbreviated phrases, such as 'ad iiii lucri etc obligo etc' ('to the fourth profit etc. I pledge etc.').[44] It is possible that the abbreviation for 'ad dei voluntatem' (or similar) has been written next to 'ad redegum etc' and the etc/ad have

[40] ARM, ECR 342, 9v1.
[41] ACM, PRT-14545, 59r2, 74v, 116v1.
[42] ACM, PRT-14546, 21r1, 36r1, 85v1.
[43] ACM, PRT-14540, 180r1, 185r1, 211r3.
[44] Ibid., 211r3.

been missed. However, this may not be the case. Missing both words seems unlikely, given that 'etc.' does not seem to be missed in any other document and the phrase is found in two other documents written by Olives in the register. Two of these entries, 180r and 211r3, were contracts related to voyages to Valencia and included both Nicholaus de Peracols and Machianus de Vaccarissis. However, in the two agreements these men take on different roles; in 180r they are the investing party while in 211r3 they are the travelling party. Otherwise, there is little to distinguish these contracts from other straight forward investments in voyages. Olives also included an abbreviated phrase 'ad dei etc.' 10 times in PRT-14540 which may have been a shortening of 'ad dei resegum.'[45]

Rather than seeing Olives' clumsy phrase 'ad dei resegum' as a mistake, the combination of the term *redegum* with God's omniscience instead demonstrates a wider understanding of the concept of risk. As demonstrated, the idea of risk was used in the agreements to express more than simply financial liability, especially when combined with ideas about God's control over the unknown conditions within which commercial ventures took place. The expression also followed medieval philosophical thought in which God has knowledge of all future possibilities, rather than there being a set determined future only known by God.[46] The 'risk of God' therefore referred to human uncertainty about the will of God and acknowledges the uncertainty in which the agreement inevitably sat.

Uncertainties were written into the contracts through placing the future outcome on God's decisions and guidance, separately from *redegum*. In a phrase of any form in the main body of the agreement (discounting the opening of contracts), God was mentioned in 472 agreements (33%). 215 contracts (15%) referred to God in a phrase relating to the making of profit, stating that the profit made in the venture would be decided by God or given by God. For example, on 4 June 1243 Bertrandus de Casella, Castilionus Richer, and Guillemus de

[45] ACM, PRT-14540, 113v-114r, 114r1-114v, 114v-115r, 115r1, 115r2, 123r3, 125v4-126r, 128v2, 215r4-215v, 219v2.
[46] Knuuttila, "Medieval Commentators," 92.

Bancho stated that 'the profit and goods would be given by God' ('omnibus lucris et bonis quae Deus vobis deinde dederit').[47] This form of phrase, acknowledging the uncertain outcome of the voyage appeared in contracts notarised in Barcelona and Mallorca from across the period: the phrase is found in the earliest register (ECR 342 written from 1240) and the latest (PRT-14566 written 1349). The expression varied a little, with some diversity of the words included, and was used when setting up how the profit from the venture would be divided between the parties. Most contracts stated that 'all the profit in the venture [would be] given by God': 'ita quod de omni lucro quod deus in dicta comanda dederit'.[48] Less frequently, the profit would be 'saved' or 'preserved' by God: 'implicamenta tam capitale quam lucrum, prout Deus ea salvaverit' ('goods, both capital and profit, as God will preserve').[49] The phrase never appeared in an abbreviated form, suggesting that there was no standardised format. In such phrases, the central element of the agreements, the investment for the purposes of making profit became defined by uncertainty; God would provide the profit and the parties could not be blamed for good or bad outcomes. The expression served as a way to set up the splitting of the returns from a venture with the caution that no profit was guaranteed; poor returns were due to decisions by God and not the failings of the travelling party, lightening the hold the contract had on the merchants. The language of the contracts demonstrates an acceptance that not everything could be controlled.

Similarly, occasionally documents stated that the trading activities themselves were guided by God's hand. 'Prout deus nobis melius administrabit' ('as God will best guide us') appeared in 19 agreements in the set (1.3%). The phrase brought the actions of the travelling party under God's guidance, proportioning responsibility to God, and away from themselves. On 6 September 1340, Bernardus Carlonis and Jacobus Xartelli took an investment of £50

[47] ARM, ECR 342, 209r1.
[48] ACM, PRT-14564, 162v.
[49] Ibid., 54r1-54v.

from Petro de Ledone. Carlonis and Xartelli were to use the investment in Mallorca and Catalonia, 'conducting the art of trade and business, as God has better guided [them]' ('artem mercaterie et negociacionis exercendo, prout Deus melius […] administravit').[50] The investing party, Ledone, accepted the risk and fortune ('ad vestrum risicum et fortunam'). The invocation of the management of God meant that the uncertainties of buying and selling the goods invested was taken on by God rather than any specific party. The uncontrollable elements of trade are taken out of the legal concerns of the travelling party and instead become part of wider future uncertainties.

References to God and God's will were also included in statements related to the success of voyages, providing a form of dispensation for the travelling party if the venture did not go as planned. It was impossible to conduct business in the face of God's apparent decision that it should not proceed, and failure blamed on the judgement of God would have been difficult to litigate against. There were 222 contracts in the set which included a qualification that the venture would occur, if God 'gave' it. For example, in 1348, Nicholaus Laurencius received an investment from Laurencius Codina for a voyage to Bugia, which he would make 'God giving' ('Deo dante').[51] A further 66 phrases referred to the will of God as the main factor which would affect the voyage. In February 1349, Thomas Barcelona received £22 4s. 9d. from Berengarius Beseya for trade, if God willed it ('deo volente'), in Sardinia and Naples, or any other location given by God ('alibi in viatico quod nunc Deo dante ad dictas partes facturus sum').[52] A further 43 phrases referred to God granting ('domino concedente') the voyage.[53] Such a large caveat to the voyage itself happening successfully provides a significant contingency for the investment. As a result, the relationship becomes defined by flexibility and uncertainty.

[50] ACM, PRT-14564, 83v.
[51] ACM, PRT-14569, 5v.
[52] ACM, PRT-14566, 69r-69v.
[53] E.g. ARM, ECR 345, 20v3-21r.

Engagement with concepts of uncertainty led to the creation of trusting relationships with a variety of power dynamics. While the investing party may have commonly taken on all the financial risk, parties engaged with the risk, dangers, and uncertainties of the voyages through the notarial documents, leaving future unknowns and possible problems in the hands of God, rather than their own control. These contracts acknowledged in many places that much of agreement was unknown and unknowable. The function of these agreements comes into question when even the most central concerns were seen as and written as up to the will of God. To what extent these contingencies stopped the contracts holding up to legal scrutiny is unclear. However, stated reliance on the fortune and will of God fabricated a sense of separation from the decisions and actions of the merchants and the outcome of the venture.

Chapters 4 and 5 demonstrated that notarial contracts could not solve the real-world risks or potential problems with people that parties faced. Language choices were used to manage these issues and took the relationships so far. As a response to the future unknowns and risks that long-distance trade involved, parties acknowledged the uncertainties and built the unknown into relationships. References to risk and God's will expressed an acceptance of uncertainty which provided space for things to go wrong and lightened the pressure between the parties. As part of trust work is the management of risk and people, seeking to deal with the problems that could come from the real world and from working with fallible people, the acceptance of risks and uncertainties sits uneasily in the framework. However, it is the acknowledgement of unknowns that allowed parties to manage expectations of the future of a relationship through acceptance that not everything could be controlled.

6.3: Discretion and Constraint

On 3 June 1243, Bertrand de Casella entered a notarial office with Castilionus Richer and Guillelmus de Bancho. Casella had just delivered his boat, along with all its equipment and apparatus to the two men, in order that they might sail it to Al-Andalus, presumably in order to raid Muslim settlements.[54] In exchange for the loan of his boat, Casella was to 'faithfully' receive a sixth of the profit ('sextam partem fideliter') and goods of the venture, as given by God. However, he was uncertain whether he would be present in Mallorca when Richer and Bancho returned. He therefore included the condition that the men were to repay his part of the profits to him 'or whomever [he] wished' ('detis michi vel cui voluero').

A significant minority of agreements left details open for later decisions, particularly using forms of the verb 'velle' to provide one party with a form of discretion to make later decisions and judgements or to constrain future possibilities according to one party's particular needs. 228 agreements (15.9% of the set) used a form of the verb 'velle' to define the levels of discretion or constraint that would form part of the relationship, allowing one or both of the parties to decide on future details. The term appeared in roughly 297 phrases. It is difficult to categories them as discretion was used in such a large variety of ways, from specifying who to repay, to the option to add more partners to a partnership, and the rights of an agent to choose future actions for a party.

The use of discretion within notarial documents places these 'dry' legal texts into conversation with a wide range of documentation, traditionally considered to be more personal and emotional. For example, Goldberg highlights that in letters between Geniza merchants and their agents it was common for the latter to be given a large amount of latitude to make decisions, varying from instructions which ranked a dozen goods from which the agent was to choose, to a simple instruction to 'do whatever your propitious judgement suggests to you'.[55]

[54] ARM, ECR 342, 209r1.
[55] Goldberg, "Choosing and enforcing," 16.

These agent relationships were generally communicated through letters and were not underwritten by legal contracts.[56] Individual decisions to rely on the ability and reputation of merchants can be evidenced in contracts setting up relationships as well.

6.3.1: Repayments

A phrase in which one party granted a level of discretion to another was used 97 times in relation to repayment of the debt or share of profit. This was the largest category of 'velle' phrases. Most (68 phrases) allowed the investing party to decide at a later point to whom the debt/share was to be repaid. The contracts which used this phrase were notarised in both Mallorca and Barcelona, across the timespan of the set. For example, on 21 October 1242, P. Genover stated that he owed G. Dunde, or his associates or whomever he wanted ('P Genover debo tibi G Dunde et tuis et cui volueris') the 120s. which he invested in his voyage to Al-Andalus.[57] Similarly, on 5 August 1316, B. de Pula received an investment of 220 doubloons and 6d., from R. (last name lost due to damage to the folio). Pula agreed to repay the investment to R. 'or to whomever' he wanted/shall desire ('soluam et tradam vobis vel cui sum quibus vos volueritis').[58] On 4 January 1349, Brisso de Neri of Montepulciano received 160 gold florins from Salvatore Ferrarii, a citizen of Mallorca and patron of the ship 'Saint John the Evangelist'. Neri invested the florins in wool from the Barbary coast ('lane Barbarite') and leather ('boldornorum') to be sent to Pisa with Ferrarii's ship.[59] Neri promised to repay the investment in the city of Pisa, within ten days of unloading the ship there. He was to repay his debt, 'or cause it to be paid', by using an agent, Geraldus Mini de Senis, to Ferrarii or whomever

[56] Ibid., 19.
[57] ARM, ECR 342, 115r3.
[58] AHPB, Pere de Torre 6/2, 166v1.
[59] 'Boldrons' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/10747

Ferrarii chose to receive it on his behalf: 'Promito […] soluere vel solui facere […] per Geraldus Mini de Senis per me ibi soluentem vobis vel vestris aut cui volunteris per vobis ibidem recipienti' ('I promise […] to pay or cause to be paid […] through Gerald Mini of Siena, who will pay there on my behalf to you or your [associates], or to whomever you designate to receive them there').[60]

There were practical reasons which may have led a party to specify that the person to whom repayment should be made could be decided at a later date. Repayments could take a long time due to the nature of the ventures and so the investor could not be sure that they would be in one location, or even alive, on the ship's return. The details in the agreement between Neri and Ferrarii suggest that proxies were used to both give and receive payments; Neri promised to make his payment through Geraldus Mini de Senis. The phrase to pay 'whomever you choose' would set up the possibility for a proxy to collect the debt, though it is likely that such a phrase would not be necessary to legally allow a proxy to collect a debt; there are notarial records setting up proxy relationships which allow for the collection of all manner of debts.[61] It may be that the phrase was a device that allowed for the investing party to transfer the credit to a third party to extinguish a debt.

The allowance of discretion to investing parties to later decide on a person to receive repayments provides an important glimpse into the complex social networks of credit and financial ties operating at the time.[62] It also suggests that there was ongoing communication between the various parties as a part of planning and running trading ventures. For example, after receiving an investment with 30 silver bezants from Poncius Gallinarum for trade in Eivissa on 26 April 1243, B. de Quarto of Girona promised to repay him three days after the ship had arrived, 'to [Gallinarum] or whomever shall present a *letter* to [Quarto], or

[60] ACM, PRT-14566, 53v2.
[61] E.g., ACM, PRT-14566, 195r-195v.
[62] E.g. van Doosselaere, *Commercial Agreements*.

accommodate' him there ('tibi soluere vel cui praesens carta michi redederit vel hospederit').[63] It was not uncommon for the contracts to refer to the need for continued future communication between the parties, either in verbal or written form. Allowing discretion in relation to concrete future decisions was one manner in which continued communication would be particularly necessary, so that investing parties could communicate to whom any payments should be made.

The location of payment was also occasionally left to the discretion of one party. This occurred in only two agreements in the set. One of these contracts stated that repayment was to be made during the trading venture. On 12 November 1242, Bonuspuer Barcher and Gamundins de Sancto Baudilio loaned their ship to A. Nas and P. de Balaguerio for a voyage from Mallorca to Algiers or Ténès, or any location in between the two. The lease was for 34 silver bezants to be paid to Barcher and Sancto Baudilio or whomever they wanted ('vel cui voluerimus') at any of the aforementioned ports ('inde quocumque dictorum locorum fecemus portum').[64] The contract points to the common practice for shipmasters to partake in the trading voyages such that payment could happen at any of the stated ports.

The second contract required the travelling party to locate the investing party in order to return the investment, as the latter had the power to decide on the location of repayment at a later time. In 1318, Bernat de Olives notarised a document for Petrus Ferrarii of Pratis (a town near Valencia). He was to repay an investment from Franchiscus Nichalai, citizen of Mallorca, of £263 18s. for trade in Algiers. Ferrarii was to return to Mallorca and repay Nichalai wherever he wanted along with his share of the profit from the voyage: 'dictam comandam ad integram quocumque volueritis Mairoice aportare ubidem facto dicto viagio dare tradere et deliberare eandem comandam cum tota lucro navigum' ('to deliver the said investment in full wherever you wish in Mallorca, and upon completing the said voyage, to give, hand over, and

[63] ARM, ECR 342, 198v2.
[64] Ibid., 122r1.

deliver the same investment with all the profit of the voyage').[65] This required Nichalai to communicate where in Mallorca he was and wanted his investment and profit repaid, requiring Ferrarii to travel and locate him.

A small minority of agreements also allowed the investing partner to decide the time of repayment in the future. These phrases provided discretion for one party and constrained the actions of the other, adding pressure to the relationship. On 16 August 1259, J. Gil received 37s. from P. de Arnaldo de Villafranca for trading purposes and promised to repay the investment 'whenever you want' ('reddere quandocumque volueris') and 'to share in all the profit that God grants me through engaging in business with them, by trading' ('in omnia lucro quod deus mihi dederit').[66] The contract meant Gil had to wait on the word of Arnaldo who could request the return of his investment at any time. The same form of relationship was created by two other agreements in the set. On 23 September 1318, Geraldus Geraldi, a citizen of Tarragona, received an investment from Bernardus Nabot of £24. He promised to repay the investment 'whenever you wish' ('restituam vobis quandocumque volueritis').[67] On 26 May 1291, Guillemus de Pariliata and Dominicus de Ulmo received an investment from Eligsendis Flecharie, the wife of Raimundus de Turri, of 100s. to sail an armed galley against enemies of the king. The travelling party promised faithfully and lawfully though a firm and legal stipulation ('per firmam et legalem stipulacionem') to return Eligsendis Flecharie's investment and her share of profits in full whenever she wished and requested it ('quocienscumque volueritis et a vobis fuerimus requisiti') without any delay, excuse or exception, or any loss or detriment to her ('sine aliqua dilacione, excusacione et excepcione et absque omni dampno et missione vestri et vestrorum'). They did note that this was to be 'after the voyage [was] completed, god willing it' ('facto dicto viatico, prout Deus ea salvaverit').[68] The promise to repay when the investing party desired after the voyage was

[65] ACM, PRT-14540, 71r1.
[66] ARM, ECR 345, 33v1.
[67] AHPB, Bartomeu de Vilalta 7/1, 130r2-130v.
[68] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 13.

completed used the language of a 'firm stipulation' to set up clear legal enforceability and an action promise made faithfully and lawfully. Pariliata and Ulmo were to repay with no delay, at any time Eligsendis sought repayment after the venture; they were beholden to her word.

A larger group of documents specified that repayment was to be made according to the 'will' of the investing party. This allowed the investing party a particularly high amount of discretion, constraining the travelling party. 212 documents (14.8% of the set) used the word *voluntas* to specify when repayment was to be made, by one or more parties. 134 agreements (63.2% of the 212 documents) used 'voluntatem vestre' in relation to the investing party in a voyage taking place after the contract was written, while only 16 referred to the will of the travelling partner, normally to specify that an investment or goods had already been received at the time of the contract. Four agreements, all partnership contracts, referred to shared will (the will of all the parties).

Overall, *voluntas* was used to create a particular power dynamic within risky ventures by placing the travelling party at the will of the investor and in an ongoing precarious position through the imposition of constraints. For example, on 20 January 1318, Jacobus Dominci and Guillmonna Pidani, the daughter of the late Machionus Pidani, went to the notary Bernat de Olives in Ciutat de Mallorca. Guillmonna Pidani decided to invest 20s. into Dominci's mercantile activities.[69] The agreement stated that Dominci was to repay the investment at the will of Pidani ('dare soluere ad voluntatam vestram'), and that 'in the meantime, [Dominici would] use the money, along with his goods, in his mercantile activities' ('interim ipsos simile cum rebus meis mercantiliter pertractare'). The time of repayment was unspecified but based on the future decision, or will, or Pidani, the investor. This placed Dominici in an interesting position. Entrusted with money to do with as he wished, he could seemingly have been called upon at any future time to repay the amount to Pidanii, along with a division of the profits: 'salutionis tibi dare diuidiam lucri quod ibi factum fuerit' ('at the time of payment, deliver them

[69] ACM, PRT-14540, 205r3.

to you, with the division of profits that will have been made there'). Dominici was in a vulnerable and uncertain position as a result of the agreement with the possibility of a request for repayment at any time, presumably after the venture had been made. In comparison the investing party's flexible position meant that they could request repayment at any time, providing a form of assurance for their payment. Asymmetry in power relations between the lender and borrower in investments such as this was not only common but was the norm. Nevertheless, even in asymmetric relationships such as this, the investor had to place their trust in the merchant's intention to repay the investment at some point and to repay specifically when asked. These phrases were adding requirements to the relationship but could not solve the need for trust to be formed between the parties.

The choice to include a reference to the will of an investing party or a party receiving money or goods appears to have been a negotiation between the notary and the parties. *Voluntas* expressions appear to have been a popular inclusion by the notary Francesch Balle, seen in 74 of his trading agreements (out of a total of 140, 52.9%). This is over double the percentage of *voluntas* expressions in the total set (212 documents, 14.7% of the set). The use of *voluntas* was not notary specific, however. While most uses were by Francesch Balle, there are various other examples from across the period. Bernat de Olives used the phrase five times, often in abbreviated form in his 1318 register which contained 28 trading agreements. For example, in 51r3 as 'dare soluere ad voluntatem vestram suum etc.' ('to give and repay according to [the investor's] will etc.').[70] Two other unknown notaries also used the phrase, one writing in 1256,[71] and the other in December 1340.[72]

The majority of the agreements involving discretion assigned through the use of the word *voluntas* phrases were between male parties. However, there are three further documents in the set, beyond Guillemonna Pidanii's investment, in which women specified

[70] ACM, PRT-14540, 51r3; 205r3, 184v1, 114v-115r.
[71] ARM, ECR 344, 75v–76r.
[72] ARM, ECR 366, 87r2.

that the investment was to be repaid at their will. On 21 March 1340, Jacobus Viloni accepted an investment of £9 from Saura Garbuni, wife of the deceased Michaelus Garbuni, to be taken to Tarragona and Tortosa and returned to Mallorca. She was to be repaid 'here in Mallorca at your will after the aforesaid voyage was undertaken' ('reddere et soluere hic Maiorice voluntati vestre facto viagio supradictis').[73] There were no obvious family members acting as witnesses for Garbuni's agreement. Garbuni later invested £4 9s. in Arnaldus Calderoni's venture to Aigues-Mortes and back to Mallorca on 20 August 1340. Calderoni promised to repay Garbuni according to her will 'after the voyage, without delay or exception, damage, grievance, or loss' ('voluntati vestræ facto viagio supradicto, sine omni dilatione et exceptione, et absque omni damno, gravamine et missione').[74] On the same day, Bernardus de Podio received an investment of £5 from Dulcia de Amerio, wife of the deceased Guillemus de Amerio, to be taken to Cagliari. Podio similarly promised to repay Amerio at her will, after the voyage, without delay or exception, damage, grievance, or loss.[75] Again, no clear relatives were witnesses. As noted above (section 5.5), the women in these agreements were likely to have been the only women present in the notarial office when the agreements were made. Nevertheless, all three placed the male travelling merchants in their agreements in uncertain positions by stating that they were to be repaid at their will after the voyage, and sometimes also without delay or other problems. Despite what might be considered their potential diminished power in the face of the notarial office, these agreements present the strong agency of female investors, without the support of family members. All three women appear to have carried on the business of a deceased husband or father, suggesting that the previous business connections may have strengthened the position of the women in their new endeavours.

[73] ACM, PRT-14564, 166v2-167r.
[74] Ibid., 58v–59r.
[75] Ibid., 59r.

While phrases granting discretion which related to repayment provided the investing party with power to decide when, where, and/or to whom the payment was to be made, a few left details of the trading venture open for the travelling party to decide later. These phrases built flexibility into the agreements and point to a moment in the planning of trading ventures before all the details had been arranged. Sometimes the location to which the travelling party decided to voyage and payment were completely tied together. We have already seen that Nas and Balaguerio were able to decide where they would sail the ship owed by Barcher and Sancto Baudilio and make repayment.[76] It was not uncommon for the merchants renting a ship to be in the middle of planning the venture and occasionally contracts tied repayment timescales to their future decisions. In an agreement written on 11 July 1242, Bernardus Galardi rented his ship, along with all its equipment, to his brother, Arnaldo Galardi, Arnaldus de Gerunda, Arnaldus Pellicer, and Beregarius de Fonte.[77] The travelling men were undecided about the destination of their voyage, yet to choose between Dénia, Alicante, the Barbary coast, or Menorca (a large variation in locations and distances). Bernardus Galardi specified that the cost of renting the ship would vary depending on the location upon which the travelling merchants decided: Dénia would cost 18 bezants, Alicante 22 bezants, the Barbary coast 44 bezants, and Menorca 50s. By calculating the distance from Ciutat de Mallorca to the different destinations, it is possible to calculate the lease rates in the contract (Table 6.1):

Location of travel	Lease rate (bezants per 1000km)
Dénia	76
Alicante	72
The Barbary Coast (taking Algiers and Al-Hoceima as the closest and most distant options.)	140 to 53
Menorca	40

Table 6.1: Lease rates in ARM, ECR 342, 84r4.[78]

[76] ARM, ECR 342, 122r1.
[77] Ibid., 84r4.
[78] Conversion rates have to be an estimation. A gold bezant is taken to be worth roughly 80 pence; this makes 1 gold bezant the equivalent of 6.66 shillings, or one-third of a pound.

Both in Iberia, Dénia was the capital of the Islamic Taifa of Dénia until 1244 and Alicante was part of the same Taifa until it was conquered in 1247 by the Castilian King Alfonso X. After Mallorca was taken by the Crown of Aragon in 1231, Menorca became an independent Islamic state, and a tributary to Jaume I of Aragon. The island was ruled first by Abû 'Uthmân Sa'îd Hakam al Qurashi (r.1234–1282) followed by his son, Abû 'Umar ibn Sa'îd (r.1282–1287). All possible locations were therefore under Islamic rule at the time of the contract (1242). The lease rate for Dénia and Alicante was similar and the two are geographically close. The rate for Menorca was much cheaper, while the Barbary coast rate ranged from a high possible rate of 140 depending on where on the coast they chose. These lease rates suggest that there was some understanding of the relative risks of the journey. The shortest and least dangerous journey, Ciutat de Mallorca to Menorca, was the lowest lease rate. Approaching the Barbary coast, however, where raiding was common, was relatively more expensive. An appreciation for the risks was part of the planning for both sides of the contract.

Whichever location the men decided upon, they were to 'pay the lease to [Bernardus Galardi], or whomever he wanted at any of the mentioned places the ship made port to unload goods' ('quod logerium debetis solvere michi vel cui voluero ubique dictorum locorum dicta sagetia faciendum portum causa discarricandi').[79] As shipmaster, Bernardus Galardi was travelling on the voyage. In this case, the investing party/shipmaster stated in the first person that he was able to decide later if a different person was to receive the payment on his behalf. In response, the four men explicitly promised to pay the fare as stated in the agreement ('promittimus uterque pro toto dictum logerium, ut dictum est, solvere'). This was a contract that in some ways left a great deal open to future decisions. However, risks tied to uncertainty were managed by the shipmaster, by stating different lease rates and providing constraints on travel locations. The location and amount of payment was to be decided as well as to whom the payment would be made, providing a combination of limited discretion for the travelling

[79] ARM, ECR 342, 84r4.

merchants who had not yet fully planned the venture and constraints which suited his needs as shipmaster.

One final form of discretion related to repayment created a particularly unequal relationship. Discretion for one party could be constraints for the other, especially in *comanda* contracts. A minority of agreements, 115 (8%) specified that the parties were to give an account of the business when the other party wanted. 15 used the verb 'velle'. These phrases were predominantly in *comanda* investment agreements (76 contracts), while 28 were partnership agreements, two contracts nominated agents, two were boat sales, and seven contracts recorded repayments of investments. In *comanda* investments, a phrase which specified that an account of the business was to be given at the request of a party held the travelling party to account for their work and allowed the investing party to decide future moments to receive updates on the venture. On 6 October 1337, Franciscus de Caldenol received £10 from Bernardus Viadeoil, a silversmith in Barcelona, for trading purposes. Caldenol promised Viadeoil that he would provide a true account to him, or anyone he wanted, whenever and as soon as asked by him or a representative: 'computabo vobiscum aut cumquo vos volueritis et reddam inde iustum et verum compotum et legale quandocumque et quocienscumque a vobis bel vestris aut nominem vestro fuero requisitius' ('I will give you or whoever you want a true, just, and lawful account whenever and as soon as I am asked by you or your representatives or in your name').[80] While Viadeoil had discretion which allowed updates on his investment whenever suited him, Caldenol was constrained by the needs and communication of Viadeoil. Even within partnerships, providing an account was not necessarily an equal obligation between the partners as sometimes one partner led the operation. For example, on 1 December 1318, Paschalis de Englada formed a partnership with Jacobus Canyoles and Periconus Cenderii. Englada was to operate in Mallorca while the other two partners were to be based in Seville and elsewhere. The latter promised to go to Mallorca

[80] AHPB, Llorenç de Canals 12/2, 76r1.

to provide their accounts and records ('cum compotis et cauculaconibus'), as many times as they were summoned in writing or otherwise by Englada ('quotiens a vobis dicto Paschale citati fuerimus literatorie vel aliter').[81]

6.3.2: The loading of merchandise

Some shipmasters allowed investing and travelling merchants to decide what goods would be loaded, from whom, sometimes within a timeframe or within a framework of options. This combined discretion and constraints. The control of decisions demonstrates a particular form of trust in the knowledge and expertise of merchants which was balanced by the needs of shipmasters to control and manage the risks from future uncertainties. In other agreements, merchants placed tight constraints on shipmasters, presenting a different power dynamic in which the shipmaster had to trust in the ability of the merchants to plan the venture and manage their work effectively.

While most contracts did not specify what goods were to be exported or imported, listing only the amount of money invested 'for trading purposes', a minority included the particular goods sent and to be returned within the contract. 555 specified the goods to be exported (38.8% of the whole set) while only 159 specified which goods were to be brought back in the journey (11.1% of the whole set). A smaller minority yet, 31 contracts (2.2%), explicitly provided discretion, allowing the investing party to decide later.

These 31 contracts granted some discretion to merchants to later decide which goods they would load onto the ship, using the verb *velle.* These contracts were mainly ship loans where the shipmaster acted as travelling party and the merchants renting the ship were the

[81] ACM, PRT-14540, 113v-114r.

investing party. The power dynamics cannot be presumed to be the same as in *comanda* investments between the two types of parties; though the shipmaster was the 'travelling party' they had control over the venture and were 'investing' a significant asset into the venture in the form of the ship. For example, on 9 September 1314, Bartholomeus Oliverii loaned his ship 'Sanctis Spritius' to Arnaldus de Basida. As a part of the grant, Oliverii specified that Basida could 'load any goods and merchandise onto the ship in Barcelona that [he] wants to send and load for the purpose of carrying to the parts of Naples' ('causa levandi et carricandi in barchinona in dicto ligno quascumque Res et merces nos in dicto ligno volueritis mittere et carrica[re] causa ea portalis[_] discarricandi ad partes de Neapolis').[82] Oliverii had planned the venture and would provide the ship while Basida was given space onboard and granted discretion to decide what he would invest at a later point.

An even smaller minority of contracts detailed the planned voyage and the loading and unloading of goods with a great number of explicit options. These 17 contracts demonstrate some of the more detailed planning that went into ventures and how shipmasters could limit the future decisions of merchants. While a moderate amount of discretion was granted through allowing some future decisions, these were constrained by the shipmaster in order to control the process and manage the uncertainty. On 30 December 1340, Johannes Calua granted his ship 'Saint Maria dela Merce' to Guillemus Serra and Jacobus Cama, Mallorcan merchants. Calua agreed to load 500 quintals of wood from the Barbary coast and depart from Mallorca to Oristano, along with any goods that the merchants wanted to load, until the boat was full: 'recipiam et levabo a vobis et quibus volueritis omnia averia vestra que in dicto ligno mitere et carricare volueritis usque ad sufficiens onus dicti ligni' ('I will receive and take from you all your goods that you want to place and load on the said wood until it reaches the sufficient weight'). He was to stay in Oristano for 8 days and provided the merchants with the option to unload at least half of the goods if they wanted; he stated that, if they did not want

[82] AHPB, Pere de Torre 6/1, 124v2-125r.

him to unload all or half the merchandise, they were to notify him within eight days ('nec volueritis me ibi exonerare in totum vel in medietatem dicti oneris vos teneamini hoc mihi significas infra dictos octo dies'). Unless otherwise notified, 'after the eight days had passed' he would immediately leave for Sardinia and unload the merchandise there ('quam lapsis dictis viii diebus ego recendam inde confestum et ibo recce […] apud Castrum Callerum').[83] The specified time frame set up clear expectations for the way that the voyage was to be organised, creating a rigid plan. Yet the plan specified that the investing party was able to make decisions later that would affect the very nature of the voyage; if they chose to unload half or none of the goods at Oristano, then there would be an additional voyage to Cagliari. Continued communication between the parties was essential to the functionality of the relationship; Serra and Cama needed to be able to communicate their decisions within a strict timeframe.

In some ways, these contracts with expanded details concerning a voyage's timeframe and the loading of goods indicate anxieties about the ventures and suggest that the details needed to be contracted for the relationship to function. Though the agreement granted discretion to one party and therefore provided some flexibility, this was controlled and limited. In these 17 detailed contracts, future decisions were to be selections from set options, creating boundaries for each party. Locations, timings, and the loading and unloading of goods were not necessarily decided, though the options were constrained for the investing party and sometimes for the shipmaster as well.

Concern and planning for the loading and unloading of goods varied as some contracts used a high level of discretion. Nine contracts contained phrases which specified that the merchants renting a ship could unload/load goods from whomever they wanted, to allow the investing party to work with whichever salesmen or merchants they might decide upon later. For example, on 12 January 1340, Bernardus Balaguer, a citizen of Mallorca, loaned his ship 'Saint Bonaventura' to Arnaldus Venrelli, a merchant of Algeciras in Valencia. Balaguer was to

[83] ACM, PRT-14564, 125r-125v.

receive goods from Venrelli and whomever Venrelli designated in Mallorca ('recipiam et leuabo a vobis et quibus volueritis'). These goods were to be taken to Cullera, Valencia, where he would wait for eight days and again load goods from Venrelli or whomever he wanted ('quibus volueritis')' before returning to Mallorca.[84] This provided future opportunities for Venrelli to choose other merchants and suppliers who might aid in the loading of cargo. In exchange, Balaguer was clear about the timeframe and locations of the voyage, providing a framework for the later decisions and limiting the uncertainty.

Three contracts went further, explicitly stating that the shipowners were not permitted to accept merchandise from other merchants. On 16 May 1349, Jaume Ferrer notarised a contract in both Latin and Catalan.[85] The document changed to Catalan when specifying the details of the voyage, such as the different ports to which the ship would travel and the loading and unloading of goods. This perhaps suggests that the use of Catalan lent itself to these extensive details as they needed to be fully understood by the parties. Bernardus Luppeti, the shipowner, specified that he could receive and load goods and merchandise from Arnaldus Serra, the merchant ('mercader'), or whomever else the said merchant wanted ('o aquell qui per ell hi serà voldrà') in each of the locations to which the ship was travelling. Luppeti specified that he was not allowed to accept goods or merchandise from any other person without the permission of Serra or his agent: 'de neguna altra persona robes ni mercaderies ell no rebrà ni carregarà en la dita cocha sense llicència e voluntat del dit mercader o d'aquell qui per ell hi serà' ('from no other person, goods or merchandise, he will receive or load on the said ship without the license and will of the said merchant or one acting for him'). The people from whom the shipmaster could receive goods was explicitly limited so that the merchant's future decisions constrained the future venture.

[84] ACM, PRT-14564, 129v2-130r.
[85] AHPB, Jaume Ferrer 19/5, 93v-94v.

Such an explicit limitation was not common. Only two other agreements included this specification,[86] one of which prioritised the named merchant rather than entirely excluding the loading of goods from other sources: on 24 March 1340, Francesch Balle notarised a contract for Petrus Martini and Petrus Amfos, patrons of the ship 'Saint Anthony', and Guillemus Cudeines, who leased the ship. Martini and Amfos were to transport Cudeines and his goods to Oran, Algeria. Martini and Amfos stated that they would not be able to receive or unload goods from other merchants, except for Cudeines and those merchants that he wanted ('nos non possimus ab aliis recipere nec levare [...] averia nisi avobis et quibus volueritis'). After Cudeines had loaded his goods, unless he delivered a full load to them ('nisi ego tradideritis nobis complementum oneris'), Martini and Amfos were 'permitted' to 'receive and load from other persons into the said ship their goods until the said wood is sufficient' ('liceat nobis recipere et levare ab aliis personis in dicto ligno eorum averio usque ad sufficiens eius dicti ligni').[87]

Amfos and Martini added to the constraints by providing some specifications for types the goods they expected to be loaded. They informed Cudeines that he was to load 400 quintals of goods for the outward journey ('teneamini nobis firmiter in ingressu de Quadrigentis quintalibus aueriorum') and 400 packages[?] ('faxiis') for the return journey ('in regressu') which would be paid for at pre-agreed rates as listed in the contract. For example, on the outward journey each jar of wine, oil, or soap was to cost 2s. ('qualibet jarra duplaria vini et jarra olei et saportis singulos duos solidi') while a quintal of weighed goods would cost 18s. ('quintali averis ponderis odre alique decem et octo denari').[88]The balance of disposition and constraint in the agreement, as well as in two other similar contracts, suggests that while the shipmasters trusted the intentions of the merchants, this was limited by their need to manage the uncertainty and guarantee a smooth and profitable venture.

[86] ACM, PRT-14564, 166v1, 168r-168v.
[87] ACM, PRT-14564, 168r-168v.
[88] Ibid.

Phrases related to the loading and unloading of goods demonstrate variable flexibility written into the agreements; merchants could have a high level of discretion to decide on merchandise while sometimes decisions had to be made within certain constraints, such as a list of options. While the granting of discretion suggests that shipmasters trusted the future intentions and capabilities of the merchants, this was commonly limited and constrained within certain options or timeframes. Later decisions meant that merchants had the opportunity to plan the details of the voyage at a later date though shipmasters still needed to manage uncertainties which such flexibility created.

6.3.3: Locations and Ships

A much larger proportion of the documents granted the travelling party discretion to decide on the location in which they were to trade at a later time, leaving one of the most important features of a venture open for a later decision. A party chose to rely on the expertise and knowledge of another and accepted uncertainty at the time of contract creation. 368 agreements (25.7% of the set) included a phrase stating that the merchant could trade in any location. These agreements gave merchants a particularly high level of discretion. The most common formulation of the phrase, appearing in 323 contracts, specified that the travelling party was able to travel 'across land and sea for mercantile purposes' or that an investment was to be carried wherever the travelling partner went 'for the purposes of trading.' For example, in a contract notarised by Pere de Torre on 9 July 1316, Johannes Monelli received an investment of £7 7s., in the form of six jars of oil, from Guillemus de Primeris, to be taken wherever Monelli went 'for the purposes of trading' ('portare quocumque ivero causa mercandi').[89] In 1348, Johannes de Franxio was to use an investment of £45 in his company

[89] AHPB, Pere de Torre 6/2, 138v1.

for trade through sea, land and fresh water, and by doing business by other mercantile means ('per mare et terram et aquam dulcem et aliter ratione mercatoriæ negotiando').[90] These phrases give a strong sense that investors relied on the competence and ability of the merchants, to know what location would be profitable or perhaps safe, allowing merchants to use their experience to make decisions during the venture.

89 agreements used a phrase similar to 'mercarii per mare et terram et aquam dulcem' (to trade by sea and land and fresh water). 19 of these were included in the agreement without the phrase 'portare quocumque ivero causa mercandi'. Out of the total 368 contracts which left the locations of trade open, 252 were in agreements written in Barcelona while 86 were written in Mallorca. They span from across the period, appearing in contracts from 1240 to 1349.[91] A small number of agreements allowed the travelling party to choose locations for trade referring to the places in which they could go as the Christian and Muslim parts of the world. In a partnership agreement between Petrus de Podio Maluerio, Ponce de Capsis, and Petrus Scribe which was to use a total of £3240 for the purposes of trade, the partners planned to trade on the Barbary coast and in both the 'Christian and Saracen' parts of the world: 'et aliis quibuscumque locis terris et partibus mundi tam Chrisianorum que Sarracendorum quibus nobis videbiter pro mare et terra et aquam dulcem' ('and in other places, lands, and parts of the world, both Christian and Saracen, where it may seem [good] to us for sea and land and freshwater').[92] These phrases trusted the knowledge and ability of the merchant to decide on locations that would be beneficial, with no constraints provided by the investor.

Occasionally the granting of unconstrainted discretion over the location to travelling parties was included alongside a single 'suggested' location. 38 of the 89 contracts which allowed the travelling party to travel across sea and land did not specify a particular destination to which they were to travel. The majority, 51 contracts of 89, included a location which was

[90] ACM, PRT-14569, 114r1.
[91] ARM, ECR 342, 132r1; AHPB, Jaume Ferrer 19/8, 91v.
[92] ACM, PRT-14564, 159r-160r.

either the final destination or a suggested final destination; on 28 April 1349, Silvator de Querio and Petrus de Castello received an investment of £51 for trade in Beirut, Syria and Cyprus 'or wherever the ship made port for the purposes of trade' ('vel ubicumque dicta cocha portum fecerit causa mercandi'). They also stated that they or one of them 'could carry the investment from Beirut to the regions of Damascus, over land and sea' ('ipsam comandam […] possimus nos vel alter nostrum portare de barut ad partes de domas per terram vel per mare').[93] Sometimes the final destination was open, within a specific area; on 22 May 1314, Raimundus de Arceriis and Salvatori Felicerii received an investment of £11 in the form of eight dozen knives in sheaths ('octo duodenis de cultellis cum eorum vagiunt') for trade in Sicily or wherever else ('vel ubicumque etc.'). They were to carry the investment wherever they may go 'throughout the island of Sicily by sea and land' ('portare quocumque […] iverimus pro totam insula Sicilie per mare et terram').[94] The naming of a location or an area within which they were to trade limited the options open to the travelling party, ensuring the investment provided by the investor was used in a more or less specific location.

Some investors provided further constraints by listing specific options. 904 agreements (63% of the set) stated either one or more locations as the specific destination for trade. 29 agreements included options from which the travelling party was able to decide, listing locations using the word *vel* ('or'). For example, on 6 May 1340, Geraldus Unicencii, a citizen of Mallorca, received £20 from Eliessende Coma Herma for a voyage to Genoa or Pisa ('apud Januam vel Pisas').[95] A further 201 agreements included a vague area within which the travelling party could choose, stating that the ship was to go to the area around a city, a kingdom, or an island.

Other agreements, stated a location but included a phrase that allowed the travelling party to also decide on another location. In 1314, Franciscus Ferrarerii dela Sala, citizen of

[93] AHPB, Jaume Ferrer 19/5, 80v-83v.
[94] AHPB, Pere de Torre 6/1, 37v1.
[95] ACM, PRT-14564, 18r1-18v.

Barcelona, received an investment from Lady Alande, his mother, for a voyage to go to Mallorca and 'then onto any parts to which [he] wanted to travel to for mercantile purposes' ('deinde ad quascumque partes Ire et navigare voluero causa mercandi').[96] Similarly, on 13 January 1271, Gueraldus Ferrarii de Sancto Gervesio and Simon de Riumayoles received £25 in the form of fabrics, gold, and other goods for travel to Dénia, then the Barbary coast, and 'to any location where the ship made port for mercantile purposes '('in quocumque loco dictum lignum portum faciat causa mercandi').[97] Similarly, on 1 July 1316, Berengarius Olot loaned his ship to P. Ris and Jacobus Bunelli for a voyage to Cagliari and then to 'the regions of Sicily, namely to the designated places on the island of Sicily' that the merchants would later want and elect '(faciendo viatico a Ciuitate barchinone ad partes de Caller et deinde ad partes Sicile videlicet ad dicto loca insule Sicilie quos vos volueritis et elgeratis').[98] Berengarius Olot then agreed in the same contract to sail the ship to the regions of Sicily or to the regions of Malta, specifically to the places that the merchants wanted ('ad […] loca dicte insule vel de Malta que vos volueritis'). These phrases meant that the travelling party was able to adjust to the conditions they found themselves in during the voyage. Simultaneously, they showed the flexibility of the investing party, who trusted in the judgement of the travelling party at a future point, to make sensible decisions with their investment.

54 contracts used the verb *velle* to specify that the travelling party could decide on a location they *wanted* to go to. When receiving an investment of £8 from Elisser, the wife of G. Mocxo, on 26 July 1316, G. Oliverii stated that he would go to any places he may want for purposes of trading, possibly in more than one voyage: 'ad quascumque partes sum loca ire et navigare voluero causa mercandi in uno vel pluribus viaticis' ('to any places I may want to go and navigate for the purpose of trading, in one or several voyages').[99] The agreement was short, with no other phrases granting discretion and no reference to faith. The travelling party's

[96] AHPB, Pere de Torre 6/1, 117r2.
[97] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 35.
[98] AHPB, Pere de Torre 6/2, 129r-129v.
[99] Ibid., 150v2.

future decision on location was the central statement, with little constraint or control by the investor. Mocxo was trusting that Oliverii would make sensible and profitable choices with her investment, with little other trust-building language in the agreement. As a result, the contract set up an intensely trusting future relationship. Similarly, on 16 July 1316, B. Barceloni received an investment of £20 from Guilleme, wife of A. Legeti, and Berengude, wife of Johannis Andronerii, for trade in any locations he wanted: 'porto in vestra comanda ad quascumque partes ire et navigare voluero causa mercandi in uno vel pluribus viaticis' ('I will carry into your order and to whichever places I may want to go and navigate for the purpose of trading in one or several voyages'). The agreement then ended by stating that Barceloni was able to use whatever vessel was returning to Barcelona: 'apportare vel transmittere in quocumque vassello veniente ad partes barchinone possemus ('we could also bring or transmit on whichever vessel coming to the parts of Barcelona').[100] The investors Legeti and Andronerii were at the mercy of Barceloni's later decisions about where to trade and which ship to use to return their investment. The contract did not contain any explicit promise phrases, no faith words, and no reference to lawful behaviour. They were trusting in his ability to conduct mercantile activity effectively without using risk-management or person management techniques.

In the whole set there were 368 agreements (25.7%) which allowed any location to be chosen for trade by the travelling party. There were a total of 79 contracts in the set in which a female party invested alone, not counting solo female parties in subsidiary agreements. 36 of these (45.6%) were for investments which allowed the travelling party to travel to any location. This is a significantly higher percentage of the general number of agreements in the set which allowed the travelling party to trade in any location. There are 10 contracts with family connections between opposing parties in the set which only involved male parties. If single female parties are included, there are 27 documents. There are two contracts which

[100] AHPB, Pere de Torre 6/2, 142r2.

contained family connections, without female parties, which allowed any location. If we add in those with female parties, there are 11. Therefore, two of the 10 contracts (20%) with family connections (without solo female parties) contained a phrase allowing any location to be chosen for trade by the travelling party. Following from this, 11 of the 27 contracts (40.7%) with family connections and including female parties contained a phrase allowing any location to be chosen for trade by the travelling party.

These comparisons show two key things. Firstly, female parties were more likely to be involved in investments in which the travelling party was able to decide upon the location of trade at a later point. This could be seen as a sign of trust, that the female investors were placing trust in the travelling party, that they would make profitable decisions later with their investment. However, taking into account the agency of these individual women before notaries, this numerical difference may have been a result of pressure on behalf of the travelling parties, to take advantage of the women, to allow them to use the investment in a more free manner. Which was closer to reality cannot be fully uncovered. This is further complicated by the other comparisons in previous chapters (such as in section 5.3) in which female parties were not treated differently.

Secondly, investments from male family members were less likely to be involved in investments in which the travelling party was able to decide upon the location of trade at a later point. This suggests that the familial relations were less prepared to trust in the travelling party. However, in line with the previous conclusion, when female parties are included in the total of contracts with familial relations with discretion related to location, the comparison shows that they were more likely to provide the travelling party with freedom to decide.

This returns us to the idea that parties made language choices based on individual interpersonal relationships which they sought to create. Indeed, the same travelling party was part of agreements with a varied amount of discretion and constraints. The main difference was only the investing parties. For example, P. Sabaterii appeared in five agreements as the

travelling party, all recorded in Pere de Torre's 1316 register. Despite all occurring between 7 July and 25 August 1316, it is unlikely that they were all for the same voyage. Two of them left the location of trade completely open, while one was to Sicily and Sardinia, one to Sardinia alone, and one to Tortosa. On 7 July, Sabaterii received an investment of £12 from B. Serra Pirrori and used two phrases which emphasised the power the travelling party had to choose where to conduct trade. Sabaterii was to take this investment 'to any parts of locations [he chose] to go or sail, in one or several voyages' ('ad quascumque partes siue loca ire et navigare voluero causa mercandi in uno vel pluribus viatico'). The agreement ended with an additional phrase that stated that Sabaterii was able to conduct trade wherever he chose, emphasising his increased agency: 'predictam comandam possimus provenire quocumque ivero causa mercandi' ('the aforementioned merchandise we may procure wherever I go for trading').[101] On 15 July, Sabaterii received £10 from A. Oliverii, for a voyage in which he could travel wherever he wanted for trading purposes in one or more voyages ('ad quascumque partes ire et navigare voluero causa mercandi in [uno vel viatico] pluribus') and could 'travel across sea and on land as seemed best to him' ('apportare vel transmittere per mare vel per terra prout mihi melius vidatur').[102]

Even when a location was stated, Sabaterii had discretion to decide on the location of trade. On 5 August, Sabaterii received green woollen fabric ('esclosis verder') from G. Ferra for a voyage to Sicily and Sardinia.[103] The agreement still ended with the option for him to carry the merchandise to wherever he decided ('porto quocumque ivero causa [mercandi]'), though always returning to Barcelona once the trade was conducted, in whichever vessel he found making the trip ('apportare vel trasmitere in quocumque vassello venienti ad partes barchinone'). On 14 August, Sabaterii received an unknown amount of money in the form of coins and saffron (the folio has been damaged) from G. Bocardi, for a voyage to Sardinia, with

[101] Ibid., 138r4.
[102] Ibid., 141r1.
[103] AHPB, Pere de Torre 6/2, 163v1; 'Escloa' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/62201

the same stipulations (open locations, returning to Barcelona on an unknown ship).[104] Finally, on 25 August, Sabaterii received an unknown amount of money from G. Terrenti and a now missing investor for travel to Tortosa.[105] This folio has been too damaged for a full transcription so most details about the agreement are now lost. The set of agreements involving Sabaterii show him receiving a variety of goods from five different investing parties, for what appears to be separate trading ventures, each with different levels of flexibility in terms of the decisions which were left open for Sabaterii to make at a later point in the planning process.

The granting of discretion to return in any boat returning to Barcelona or Mallorca presents an awkward question: why did the merchant not plan to return on the same boat they left in? This is perhaps one of the most obscure parts of the trading ventures. It may be that some merchants accepting *comanda* investments made use of and purchased space on ships being sent on voyages by others, which may not have planned to return, or had further destinations planned.[106] The option for Sabaterii to use two of the investments 'in one or several voyages' does suggest that the investments were not for a specific return trip that he was planning but for general mercantile purposes. Partnerships could also receive *comanda* investments as a part of the overall capital; Matheus Civaderii brought £4240 to a partnership he created with three other men, 'from [his] own goods and from the goods of people from whom [he had] received *comanda* investments' ('de bonis meis et de bonis quarumdam personarum, de quibus comandas recepi et ad quarum comandarum').[107] The agreements with these high levels of discretion reveal a part of trade on the Mediterranean as a complex world of connections and tangled ventures.

Rather than relying on the expertise and knowledge of the travelling merchant, some parties instead placed their trust in the knowledge and choice of God in location phrases.

[104] AHPB, Pere de Torre 6/2, 175v3.
[105] Ibid., 186r3.
[106] On the sale and organisation of space onboard ships: Elizabeth Lambourn, *Abraham's Luggage: A Social Life of Things in the Medieval Indian Ocean World* (Cambridge University Press, 2019).
[107] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils*, doc. 27.

While the merchants may have been able to plan a voyage, the uncertainties of trade, in terms of weather etc. meant that specific plans were challenging. In calling on the knowledge of God for future decisions, the merchants distanced the outcomes from their decisions. The outcomes could not be foreseen or controlled by the most experienced merchant. Instead, God was given the responsibility. 21 contracts referred to God in sentences about the location of trade (1.5% of the set), from across the period. There were six main variations: merchants might go to 'wherever God will best provide' ('ubicumque Deus nobis melius administraverit'),[108] to wherever 'God granted' or willed ('Domino concedente'),[109] to the parts which God guided [them] to choose' ('ad illas partes quas Deus duxerit eligendas'),[110] to parts which God would lead [them] to choose' ('ad illas partes, quas Deus mihi duxerit assignandas'),[111] to a location 'as God wants to preserve' ('sicut deus saluare voluerit')[112], or to places 'to carry out the lord's command' ('fecere de domino comanda').[113]

All the parties in contracts with this phrase, apart from one, appear to have been Christians. Yet, the locations of the voyages have little in common. Two agreements did not specify the location at all, leaving it completely open.[114] One was to Algeciras (Alziziram del Hadra originates from the Arabic الجزيرة الخضراء, 'The Green Island'),[115] which was ruled by Christians at the time of the contract (1349). One voyage was to Algiers or Béjaïa,[116] another possibly to Algiers and the Barbary coast in general,[117] one to Constantinople,[118] one to

[108] ARM, ECR 343, 160r5. Also, AHPB, Jaume Ferrer 19/5, 1r1, 19/5, 80v-83v, 87r1, 90r-90v; ARM, ECR 343, 206r2.
[109] ARM, ECR 345, 119v. Also AHPB, Llorenç de Canals 12/2, 36r-36v; ARM, ECR 343, 243v2-244r; ARM, ECR 345, 23r1–23v; Madurell i Marimon and Garcia i Sanz, *Comandas comerciales*, doc. 35; AHPB, Jaume Ferrer 19/8, 6r-6v; AHPB, Pere de Torre 6/4, 97v2-98r; ACM, PRT-14554, 56r1.
[110] ACM, PRT-14569, 56v–57r. Also ACM, PRT-14569, 52v-53r; ACM, PRT-14566, 122r, 143r1.
[111] ACM, PRT-14566, 125v-126r.
[112] ARM, ECR 343, 245r2.
[113] AHPB, Pere de Torre 6/2, 105r1.
[114] ACM, PRT-14566, 122r, 125v-126.
[115] Ibid., 143r1.
[116] ARM, ECR 343, 160r.
[117] ARM, ECR 345, 23r1-23v.
[118] ACM, PRT-14569, 56v-57r.

Dénia,[119] one to the Byzantine Empire in general,[120] and two to Castle Caylis on Sardinia and then to Venice.[121]

God was invoked in these cases as the creator of unknown elements. Environmental factors, such as winds, storms, and tides, and the presence of pirates, could not be predicted and may have led to changes in the destination. There are 323 agreements which left the place of trade open, without referencing God. The added inclusion of God in a small minority of agreements as the mover of the elements provided leeway for the travelling partners while invoking the power of an unknowable being. These phrases presented the voyage as going wherever God were to lead, putting the parties 'at God's mercy'. The third variation described God affecting the decisions made by the travelling partner: 'et ad illas partes quas Deus duxerit eligendas' ('to those parts which God will guide me to choose'). The phrase is particularly interesting when placed in the context of Aquinas' view that all human decisions are controlled by God: 'acts of choice and movements of the will are controlled immediately by God'.[122] The merchants were actively separating personal responsibility from the decisions. Invoking God provided the travelling parties with the discretion to make future decisions without calling on their own reputations directly.

Occasionally agreements made references to future communication between the parties in relation to location, allowing them to make and communicate decisions in the future. For example, on 9 October 1340, Petrus Toselli and B. Gisbert, lent their ship, 'Saint Salvator', to Johannis de Podio of Balneolis and Jacobus Cunill.[123] Toselli and Gisbert agreed to load whatever merchandise Podio and Cunill chose until the ship was full before sailing to Naples and staying there for eight days. During this time, the merchants were to communicate whether they wanted the ship to return to Mallorca or make further trips, loading further goods

[119] ARM, ECR 343, 245r2.
[120] ACM, PRT-14569, 52v-53r.
[121] AHPB, PRT-14566, 122r, 125v-126r.
[122] Craig, *Divine Foreknowledge*, 125.
[123] ACM, PRT-14564, 83v-85r.

in Naples. Toselli and Gisbert stated that after receiving the word of the merchants on the question of location and the loading of goods, they would send the said ship wherever they wanted for her to be loaded: 'habitem dicto verbo et receptam dicta scriba vestra' ('having your word and receiving your writing'). This agreement used the word 'volueritis' nine times, each in a phrase which allowed the investing merchants of Podio and Cunill to load whatever goods they wanted, from whomever they wanted, and once to state which locations they wanted the ship to travel to. The long and detailed agreement ended with a promise from each party to the other, that they would all fulfil the contract as stated, under the penalty of £200, which could be acquired through the hypothecation of goods if needed.

Given such unknown conditions for the voyage they were undertaking, the discretion to change the destination port, or choose a safer path, was written into the contracts, taking advantage of the flexibility provided by the acknowledgement of the power of God to shape the unknown future. The infrequent inclusion may also suggest that the parties to these contracts had a greater level of trust between them; the shipmasters trusted the knowledge and experience of the merchants to make good future decisions while the merchants trusted the ability and honesty of the shipmasters to follow their instructions across the relationship.

The granting of discretion such that the ship that was to be used for the voyage was to be decided at a future time reflected a similar understanding of the uncertainty that was inherent in the planning of ventures. The vessels used to conduct the trade voyage and to return to Barcelona or Mallorca could remain open in contracts, decided later by the travelling party. Often the specific ship or shipowner was just not stated in the contract (667, 46.6% of the set). 773 contracts (54%) specified the vessel, either by the owner or the name of the ship. Sometimes the name of the ship and owner were not stated but clearly known, as in an agreement between Bernardus de Arno and Bernardo de Ferrariis on 8 December 1242. Arno, the travelling party, stated that he would sell the invested goods in Valencia or whatever place

the said ship made port ('in Valencia vel quecumque loco dictum lignum fecit portum').[124] A small group, 166 agreements (11.6% of the set) allowed the travelling party to use any vessel, either for the main voyage or the return. Only 13 of these were written in Mallorca.[125] The rest were all written in Barcelona.

The vessel to be decided upon could be in relation to the main voyage being undertaken or the return voyage. 51 agreements allowed a merchant to decide on the vessel used for the main voyage. 126 agreements allowed a merchant to decide on the vessel used for the return voyage. 17 allowed a merchant to decide on both. The need to leave the ship used for a voyage open to the discretion of the travelling merchant demonstrates the complex planning involved in mercantile activity. Not specifying the vessel to be used in the venture meant that one of the most important practicalities was left open to a future decision by the travelling party. This may have been due to the nature of planning long-distance voyages where uncertainty could aid the process of organisation. Each contract presents a venture at a specific point in in the planning process. Nevertheless, leaving details open, such as the vessel used for trade, meant that the timing of the voyage and the captain and the crew were yet to be determined. Leaving these future decisions to the travelling partner created a great deal of uncertainty for the investing party and represented a large amount of trust in the future relationship based on the knowledge and experience of the travelling partner.

The decision to grant the travelling party discretion in relation to the ship occasionally appeared to be part of the negotiations of the agreement writing process. For example, Bartholomeus de Pinu received an investment of 100s. from Berenguea, the wife of B. Ermengandi. Pinu was to use Simon de Moludines' ship for a voyage to the Byzantine Empire for trade. The agreement originally ended with a statement that Pinu could use any ship which

[124] ARM, ECR 342, 132r1.
[125] ACM, PRT-14566, 109r, 133v; ACM, PRT-14540, 123r3, 132r3-132v, 132v1, 211r3;ACM, PRT-14545, 59r2; PRT-14546, 36r1; PRT-14564, 157v-158r; PRT-14569, 123r-123v; ARM, ECR 343, 114v3; ARM, ECR 342, 119v3; ARM, ECR 344, 88v1.

was travelling to Barcelona in order to return with the purchased merchandise.[126] However, this sentence was crossed out, presumably during the drafting of the agreement (Figure 6.1). The contract specified the vessel that was to be used for the main voyage, the ship owned by Moludines. It may be that the parties decided to change a previous decision that a different ship would need to be used for the return.

Phrases which granted discretion to decide on the vessel were written in similar ways to discretion phrases for other types of decisions, such as location. Most occurrences of the phrase simply stated that the travelling party was to go in any ship for the purposes of trade ('in quosque vassello Illuch ivero causa mercandi'),[127] or return on whichever boat was returning to Barcelona, Mallorca, or to the Catalan lands or 'the west' more generally:[128] 'vobis apporto in quoque vassello venienti ad partes barchinone' ('I bring [them] to you on whichever vessel comes to the parts of Barcelona').[129] These phrases provided the travelling merchant with express power to choose whichever vessel they wanted. Some contracts made the future decision explicit, using the verbs *velle* or *posse*. For example, B. Dalmatius received an investment of £99 from P. Gaut and B. Gaute, for trade using whichever ship Dalmatius wanted: 'promito portare utercum in navi voluero' ('I promise to carry with me on whichever ship I want').[130] Occasionally, the judgement of the travelling party was called upon: 'apportare vel transmittere in quocumque vassello mihi melius videbiter' ('to bring or transmit on

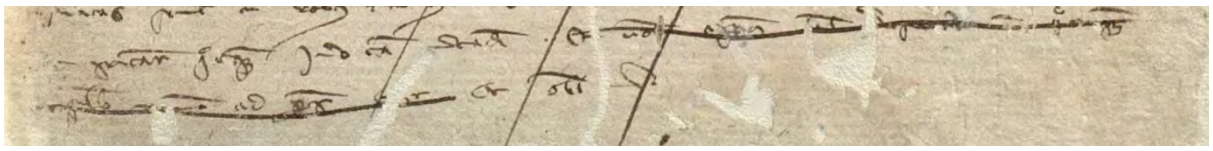


Figure 6.1: Detail of AHPB, Pere de Torre 6/2, 142r3, showing crossed out text. 'vobis apportare vel transmitere quocumque vassello venienti ad partes barchinone' ('to bring or transmit to you by whatever vessel coming to the parts of Barcelona').

[126] AHPB, Pere de Torre 6/2, 142r3.
[127] AHPB, Pere de Torre 6/2, 105r2.
[128] Ibid., 94r1, 114v3, 171v1.
[129] Ibid., 93v1.
[130] ARM, ECR 343, 114v3.

whichever vessel seems best to me').[131] The inclusion of words explicitly indicating the future decision to be made by the travelling partner highlighted the reliance on the reputation and professional abilities of the merchant.

Contracts acknowledged that many details of the ventures were unknown and unknowable. Parties reacted differently to this uncertainty, granting varied levels of discretion and constraints which changed the power relationship between parties. The granting of discretion allowed one or more parties to manage uncertainty as suited their needs, while limiting others through constraints.

The granting of discretion saw parties balance trust in the knowledge, experience, or intentions of a party with the need to manage uncertainty and control the future of the venture. Occasionally the parties placed future decisions into the hands of God, writing uncertainty and their inability to control the outcome of their venture into the contract and displacing their responsibility for the outcomes. Though female parties were more likely to be involved in investments in which the travelling party had discretion to choose the location of trade at a later point, it was still a minority of agreements (368; 25.7% of the set) that allowed trade to occur in any location or left locations or vessels open for later decisions. The most common use of discretion was related to the location of trade, suggesting that this was a part of the venture which needed particular flexibility, perhaps to react to the realities of the weather, safety, and profitability of each potential market at a future time. A smaller group of documents granted discretion in relation to other parts of the venture. Overall, documents which used phrases to grant discretion and set up constraints used uncertainty to create an agreement which dealt with the risks of long-distance trade.

[131] AHPB, Pere de Torre 6/3, 35r2.

6.4: Judgement as discretion

6.4.1: Ability and best judgement – do the best you can

On 12 May 1243, Bernardus Salem and Simon Batedor received an investment of 170.5 quintals of oil and 14.5 of woollen cloth and numerous bezants from Bernardus Spanioli for a voyage to Beschia or wherever they made port for the purposes of trading in their ship. Salem and Batedor were given a large amount of discretion in terms of their trading activities. Rather than returning with specific goods from their voyage, the travelling parties promised that they would sell the goods which he invested as best they could ('promittimus illuc dictas merces vendere vel baratare sicut melius possimus') and to legally reinvest the price they obtained for them as best they saw and knew ('precium quod inde habuerimus legaliter reimplicare ut melius videamus et cognoscamus').[132] They agreed that they would return the profit, in good faith and lawfully, and that they would speak the truth of the whole matter ('reducere […] et bonam fidem et legaliter inde tibi portare et in omnibus verum dicere'). None of the three men reappear in other agreements; their relationship can only be glimpsed from one point in time. Spanioli was placing an immense amount of trust in the professional reputations of Salem and Batedor. They were able to use their judgement, based on the conditions they found at the destination port, which may or may not have been Beschia. Spanioli had no ability to know whether the returns of the voyage were the result of best behaviour and judgement in the destination ports and would have to rely on the honesty of Salem and Batedor. The mercantile activity had limited constraints; Salem and Batedor were not allowed to send the goods to 'Saracen or hostile territory' and promised to ensure that they were returned to Mallorca ('intelligat quod non possimus quod mittere dictas merces in terram sarracenam vel alicubi, immo vobiscum promittimus defferre et reducere in tuum posse apud Maioricas').

[132] ARM, ECR 342, 204r3.

The relative freedom to sell and invest the goods based on knowledge and experience presents one of the highest levels of discretion granted in the agreements. These were uncertain and effort-based obligations, which gave the parties the highest form of discretion, allowing them to work to the best of their abilities and to an unknown future situation. Instead of being bound by constraints, parties were granted discretion with phrases which explicitly spoke to the ability and knowledge with open forms of obligation. The result is an expression of trust as the investing parties did not specify outcomes or specific needs. The granting of discretion based explicitly on judgement and ability, occurring in 210 agreements (14.7%), was one of the most distinct ways in which investing parties placed their trust in the reputation and character of travelling parties, managing uncertainty through increased flexibility.

168 agreements (11.7%) granted discretion with reference to the ability of a party, such as 'I will do the best I can'. 104 were written in Barcelona or nearby and 71 in Mallorca. Most used the phrase to allow the travelling party to sell and purchase goods with flexibility, as seen in Salem's and Batedor's plans. This was, in many ways, a disposition promise which saw the party create an obligation based on the nature of their future behaviour and actions. The phrase was written in two forms of different lengths. A brief form was added to sentences, such as in a contract written by Francesch Balle on 5 January 1340; Petronus Gilabert received a *comanda* investment from Jacobus Cama of £358 which was to be invested in goods which Gilabert would sell as best he could ('vendere prout melius potero').[133] A longer form was used with various trading verbs, expressing that general mercantile activity was to be done as best a merchant could. For example, on 1 December 1295, Jacobus Terrionis, Berengarius de Fenestris, and Petrus de Sancto Petro formed a partnership with Arnaldus de Rippis worth 8000s. The investment was to be used for buying, selling, profiting, as best they could ('mercabimus, percaciabimus et lucrabimur, prout melius poterimus') and exchanging and making other profits, as best they could ('cambiando et alias lucrando, prout

[133] ACM, PRT-14564, 129r.

melius poterimus').[134] The use of the verb *posse* (to be able to) defined the future behaviour of the travelling partner by their ability; they were to do the best they were able to.

Sometimes the verb *videre* (to see or, in the passive, to seem) was used rather than *posse*, creating different implications for the future behaviour being contracted. This word choice emphasised that future decisions relied on the perspective and objective judgement of a particular situation, creating phrases based explicitly on professional judgement. Terrionis, Fenestris, Sancto Petro, and Rippis, for example, were to use the investment for 'buying and selling goods and other things as seemed best' to them ('emendo et vendendo […] merces et alias res, que nobis utiles videantur').[135] Similarly, when receiving £20 from B. Archa for trade in Tarragona, P. de Valle de Turre den Barra promised to trade, profit, negotiate, procure, buying and selling as seemed best' to him, for his and the investor's convenience ('promito mercari et lucrari et negociari et procaciare emendo et vendendo et […] prout mihi melius videbiter faciendum ad comodum vestri').[136] This contract created a future relationship in which Archa relied on the ability and competence of Valle de Turre den Barra. Much like in a modern asset management fund, Archa was prepared to hand over his goods to Valle de Turre den Barra and trust that he would use them to his benefit, returning profit. The relationship relied on the competence of the 'asset manager' to use the investment effectively, creating a relationship which depended on a great deal of trust. The combination of trading verbs in this manner was not uncommon. The list of verbs related to trading gives a sense of wide possibilities for the travelling party, especially as the phrase often included a judgement phrase. It was used by the notaries Bartomeu de Vilalta, Llorenc de Canals, Francesch Balle, Guillem Pera Tarasconi, Bernardi de Villa Rubia, Petrus Lupeti, and Guillem Borrell.[137]

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[134] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 15.
[135] Ibid.
[136] AHPB, Pere de Torre 6/2, 139r1.
[137] E.g. AHPB, Bartomeu de Vilalta 7/1, 130r2-130v; ACM, PRT-14566, 23r-23v, 59v1-60r, 69r-69v, 69v1-70r, 95v1, 109r, 180v2-181r, 181v-182r, 191r, 194v-195r; ACM, PRT-14564, 18r1-18v, 50r2-50v, 50v-51r, 161r-161v; ACM, PRT-14569, 114r1, 120v-121r, 121r-121v; Madurell i Marimon and Garcia i Sanz,

Discretion which relied on judgement was also expressed with the verb *nosco* or *cognoscere* (to know, be acquainted with), sometimes alongside *videre*, as can be seen in the agreement between Salem, Batedor, and Spanioli in which the travelling party was to legally reinvest the price they obtained as seemed and as they knew best ('reimplicare ut melius videamus et cognoscamus').[138] The use of *cognoscere* and *videre* placed greater emphasis on the objective judgements made by the travelling party, rather than simply their ability. These were future decisions which relied on their reputation and character, using flexibility in response to the unavoidable uncertainties of long-distance trade. The merchants were trusted to use their knowledge and understanding to make the most of their situation. Use of the verb *expedire* ('to seem to be right') had the same effect on the phrase, emphasising a large amount of discretion in the judgements which were to be made.

Phrases which set up a relationship by allowing one side a large amount of discretion which relied on the knowledge and experience of the travelling party were not particularly uncommon. 141 agreements (9.8%) involved a phrase such as 'as I see fit' or 'as I know best'. For example, Raymundus de Podio received an investment from Jacobus Castelli for trade to Alicante, in which he was able to return with goods which he considered to be best given the circumstances he would find: 'Promito vendere etc. et implicare in illis rebus quas novero meliores' ('I promise to sell, etc. and to include in those goods which I know [to be] better').[139]

The specific mercantile activity that would be subject to discretion which was granted according to the best judgement of a merchant also varied. Sagarra was to use his best understanding in all mercantile business[140] while Batedor and Spanioli were to use their best judgement in their decision to reinvest the profits from goods.[141] The way in which an

Comandas Comerciales, doc. 61; Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* docs. 15, 16, 27, 32.
[138] ARM, ECR 342, 204r3.
[139] AHPB, Jaume Ferrer 19/6, 15r2.
[140] ACM, PRT-14566, 191r.
[141] ARM, ECR 342, 204r3.

investment and profit was returned may also have relied upon the judgement of the travelling party. On 21 August 1291, Raimundus de Tarascone received £28 9s. 9d. in the form of saffron and currency from Guillemus Terragona, for trade in Sardinia on Poncius Massot's ship and then on to Perpignan over land. Tarascone promised to sell the saffron faithfully and invest the profit, along with the currency, in goods to be returned. He stated that he would bring back the investment or have it transmitted to Guillemus Terragona in Barcelona by sea or by land, 'as it seem[ed] best' to him ('possim hanc comandam reducere vel vobis transmitere in Barchinona per mare vel per terram, prout mihi melius videatur').[142]

Nine contracts allowed the travelling party to decide on the location of trade using their judgement.[143] On 14 March 1340, Magdalene, daughter of Petrus de Podio Maluerio and widow of B. Garrigie, trusted Petrus de Podio Maluerio and Petrus Scribe to use her £700 investment for trade in One and 'in any other places, lands, and parts of the world that seem[ed] better' to them ('in loco de One et in aliis quibus cumque locis terris et partibus mundi quibus nobis melius videbiter').[144] Similarly, in a very short agreement, G. Cachani received 100s. from B. de Podio. Cachani promised to conduct trade, negotiate and procure, by buying and selling goods and merchandise through sea, land, or fresh water, to whichever places pleased him ('promito mercari negociari et procacare emendo et vendendo res et merces […] per mare et terra et aquam duclem ad quoscumque partes me placuerit'.[145] There were no other promises or specific obligations included in the agreement, and the only explicit trust work language was an abbreviated pledge of all goods ('et obligo'). The combination of numerous trading verbs as a part of a promise of behaviour from a travelling partner was not always combined with an open allowance for them to do the best that they could or saw fit.[146]

[142] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 56.
[143] AHPB, Pere de Torre 6/3, 37v2, 52v1; AHPB, Pere de Torre 6/4, 67r2, 93r; ACM, PRT-14564, 50v-51r, 160v-161r, 162v, 161r-161v, 162v.
[144] ACM, PRT-14564, 162v.
[145] AHPB, Pere de Torre 6/3, 53v3.
[146] E.g. ACM, PRT-14564, 129v1.

Inclusion of discretion based on judgement was an additional choice which elevated the weight of the competence and skill of the merchant as a foundation for the relationship.

Only occasionally was discretion using ability or judgement granted to a party in relation to the vessel used for a voyage. In an agreement written by Pere de Torre on 22 February 1328, Martinus de Bruchfet received an investment from Jacobo za Castanya and Salvatori ses Tosques of £20 12s. 4d. in the form of one costal of rice ('unique costalibus de arrocio') and twenty-one baskets of white resin ('viginti uno coffino de atzebib albo') to be traded in Sardinia.[147] Bruchfet was able to return purchased merchandise on whatever vessel, or vessels, seemed based to him ('in quoque vassello seu vassellis quibus melius videbitur').[148] It was not common for contracts to explicitly state that any ship could be used for the main or return voyage: 166 agreements (11.6% of the set) included such a phrase. Granting discretion with reference to the judgement of the travelling party placed trust in their ability to make effective and productive choices with the investments which they received.

As these agreements relied on the best judgement of travelling parties, it would be logical for investing parties to include other more binding and inflexible stipulations, making up for the risk that they were undertaking by granting a large amount of discretion. However, this was not the case. None of the agreements which included a best judgement phrase used a guarantor or stipulated a monetary penalty for non-fulfilment. Only one included specific collateral; when G. de Valancre received an investment from Guillellmo Durandi of 15 silver bezants for a voyage to Palermo or Trapani (or anywhere else) on 9 August 1241, Valancre was allowed to invest in merchandise according to his best judgement: 'fecerimus in melioribus mercibus quos defferuntur in navi' ('we convert into the best merchandise which is to be

[147] 'Costal' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/3641; 'Arroz' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/10571; 'Cofines' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/21788; 'Atzebib' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/10678.
[148] AHPB, Pere de Torre 6/3, 67r1.

carried on the ship').[149] Slaves were part of the merchandise, as they formed the collateral for the agreement: 'inde obligo tibi specialiter omnis sarracenos quos deffero in dicta navi' ('I specifically pledge to you all the Saracens whom I carry on the said ship').[150] All other contracts which relied on the best judgement of the travelling party did not use the risk-management techniques analysed in chapter 4. Uncertainty management through the granting of discretion using best judgement created a relationship with heightened trust between the parties without other trust work in the form of risk management.

Nevertheless, these agreements include phrases defining the repayment of the investing party according to their will (*voluntate*) slightly more often than other contracts in the set. *Voluntate* phrases occur in 21 of the 168 (12.5%) of agreements which allowed for discretion through the ability of the travelling party ('best I can'), while 23 of the 141 (16.3%) with a phrase such as 'as I see fit' included repayment defined by the *voluntas* of the investing party. These figures are both greater than the 85 agreements (5.9%) of the whole set which refer to repayment by the *voluntas* of the investor. This suggests that parties managing uncertainty through discretion using ability and judgement were more likely to use the uncertainty-management technique of repayment at the discretion or will of the investor.

However, character-management techniques were sometimes combined with behaviour through the best judgement or ability of the travelling party. 29 of the 211 agreements which granted discretion through the judgement or ability of a party combined the phrase with an expression of good faith (13.7% of the group, 2% of the whole set). This presents a small number of documents which invited the investing party to place their trust on the character, ability, and reputation of the travelling party in the most intense manner. For example, on 9 December 1348, Vincentius Robert received an investment of £26, in the form of cloth, wool, cinnamon and saffron from Petrus Ortalani, who was also investing on behalf

[149] ARM, ECR 342, 32v2.
[150] Ibid.

of Petrus Peretoni.[151] Robert promised to sell the cloth as best that he could in good faith ('ut melius potero bona fide') and to reinvest it faithfully in good and useful merchandise ('pretium eiusdem fideliter complicare in bonis et utilibus implicamentis'). The profit would also be provided by God ('ipsa implicamenta prout ea Deus salvaverit.') The reference to the reputation of the merchants in these agreements served to further emphasise the importance of the judgement and character of the travelling parties, elevating the reliance of the investing party on their positive and effective behaviour, combining uncertainty and character-management.

The small group of documents discussed in this section stand out by granting discretion through specific reference to the judgement or ability of the travelling merchant, outlining expectations for future behaviour through effort-based and open obligations. Instead of being bound by constraints, parties were granted discretion with phrases which explicitly spoke to their ability and knowledge. The outcome is an expression of trust as the investing parties did not specify outcomes or specific needs, instead embracing the uncertainty of trading ventures and allowing the experience and ability of individuals to shape the venture.

[151] ACM, PRT-14569, 123r-123v.

6.4.2: Discretion and Judgement in subsidiary *comanda* investments - an illustration of individual relationships

Document 1:

27 March 1314

'Item Jacobus Oliverii comorans luxta domum fratrum minorum xi libras unum solido vesti de barchinone implicatis simul cum rebus vestris eundo et redeundo etc ut supra.

Testes Bertrandus ~~Joha~~ Crestini et G Serra'

AHPB, Pere de Torre 6/1, 14r1 [subsidiary document 1].

[Likewise, Jacobus Oliverii, residing near the house of the Friars Minor, £11, 1s. of Barcelona currency pledged together with your goods, going and returning, etc., as above.

Witnesses: Bertrandus Crestini and G. Serra]

Document 2:

11 May 1349

Simile instrumentum fiat vobis Ffrancisto Burquet mercatori ciui barchinone de quingentos et ~~quinque libras~~ quindecim libras barchinone implicitas in Centum marchis argenti legis et in sexagine marches turonensium argenti Emerciare aespars in pipere vel in illos mercibus quas noverimus meliores aespars ~~ad ratum cognone~~.

Testes Bn Sabaterii et Ffranciscus de Fabrica prebiterii

AHPB, Jaume Ferrer 19/5, 82v [subsidiary document 24].

[Let a similar instrument be made for you, Franciscus Burquet, merchant and citizen of Barcelona, for ~~£5~~ £115 of Barcelona currency, invested [in the form of] in 100 silver, lawful, marks and in 60 silver marks of Tours. To be sold for spices in [the form of] pepper or in those goods which we know to be better ~~at the agreed rate~~.

Witnesses: B. Sabaterii and Franciscus de Fabrica, priests.]

Discretion was granted in a variety of document types, demonstrating their role in creating particular relationships and emphasising the particularly bespoke role which they played. Even some subsidiary documents granted discretion through specific reference to the judgement or ability of the travelling merchant. The choice to include discretion in the subsidiary document shows that these smaller agreements were still negotiated so that verbal and phrasal choices were made which fitted the particular relationships.

Most subsidiary documents were very brief, stating the name of the investing party and what they invested, with little else (see document 1). Occasionally a promise phrase was included in relation to the way the investment was to be used (see chapter 5), but little else related to the planning of the trade voyage was included. In comparison, a series of documents written by Jaume Ferrer for Silvator de Querio and Petrus de Castello, who planned to trade in the Middle East and Cyprus, varied considerably. In the main document, they received an investment from Jacmete, the wife of Franciscus Ferrarii. The merchants were to return with pepper ('pipere') and God would influence the outcome of the venture: the vessel used to sail the voyage and return was provided to them by God 'deus nobis administraverit'.[152] This agreement served as the main document for 37 subsidiary documents. In eight subsidiary documents, the goods which were to be returned were explicitly open to the judgement of Querio and Castello. Some looked to the knowledge of the travelling party; as a part of Franciscus Burquet's investment of £515 in the form of 100 silver marks and 60 silver marks of Tours (document 2), the travelling party was to return with spices, especially pepper, or other spices which they knew to be best: 'emerciare aespars in pipere vel in illos mercibus quas noverimus meliores aespars'.[153] Likewise, as part of B. Payada's investment, the travelling party were to return with spices or whichever things or goods which they knew to be best: 'Emerciare et espars in illis rebus et mercibus quos noverimus meliores.'[154] A man with the

[152] AHPB, Jaume Ferrer 19/5, 80v.
[153] Ibid, 82v [subsidiary document 24].
[154] Ibid., 83v [subsidiary document 37].

surname Sauayl (damage to the folio means the full name is lost) invested £47, 2d. in the form of seven coloured cloths, one woollen blanket, and an unknown object.[155] Querio and Castello promised to invest the profit from the goods in ginger, or in other goods which they 'understood to be best': 'emerciare in pipere vel in ginzibere vel in aliis mercibus qua venerimus meliores ad cognitionem'.[156] In these short documents the individual relationships were negotiated and the intended future behaviour was contracted; some investors chose to grant discretion and leave the decision of which goods to return to the judgement and knowledge of the travelling party .

Other subsidiary documents in the same series and related to the same venture were not concerned with knowledge but with the market conditions which the travelling party might find, allowing them to use their judgment to do the best they could in the moment. For example, Sibilie, widow of Berengrius Beneti, invested £60. Querio and Castello promised to invest in lacquer, pepper, or sugar, as they deemed best: 'promitimus implicare in lacca vel in pipere vel in Sucrare in una vel duarum istarum mercia quos nobis melius visum fuerit' ('we promise to invest in lacquer or pepper or sugar or one or two of these goods, whichever seems best to us').[157] Similarly, Petrus de Comellis invested £667, 6s. 1d. in the form of 103 coloured cloths, 16 *barragans* (woollen or silk cloths), and 16 woollen quilts.[158] Querio and Castello promised to use their judgement in the sale of the goods: 'possimus baratare totum vel partem cum quibus usque rebus mercibus que nobis videbuntur.'[159] ('we may barter all or part with whatever goods or merchandise seem fit to us'). Other subsidiary documents in the same series (24 out of 37) did not include discretion using judgement but specified the good which was to be returned, such as pepper or fabrics ('promitimus implicitas in

[155] This reads as 'uno lintecomo' though I cannot identify the object.
[156] AHPB, Jaume Ferrer 19/5, 82v [subsidiary document 25].
[157] Ibid., 81v [subsidiary document 14].
[158] 'Barragans' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/10720; 'Flaciatas', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/22696.
[159] AHPB, Jaume Ferrer 19/5, 83v [subsidiary document 36].

pipere'[160]/'implicitas in panorrum').[161] A further five in the group did not specify goods to be returned in any form.

The only real difference amongst the subsidiary documents was the investors. In each contract, the travelling party consisted of the same two men . Most investors, including in eight documents using discretion through judgment, invested silver or fabrics of some kind. Within the 37 documents, the lowest amount invested was £7 40s. 8d. while the highest was £676 6s. 1d. The subsidiary documents with discretion through judgment had a similar variety, with the lowest investment of £20 and the highest of £676 6s. 1d. The subsidiary documents which did not specify the outcome of the voyage generally involved monetary investments rather than goods, (goods were invested in only one, in the form of saffron), with the lowest value of £30 and the highest of £100 (though one amount is lost from damage to the folio). The travelling merchants did not reappear in other documents, except once when Querio invested in Arnaldus de Angulo's voyage to Cyprus.[162] The main visible difference between documents was the interpersonal relationships; there were social dynamics occurring within the set which are now difficult to access.

A smaller series of documents further demonstrates that the granting of discretion through judgment was chosen by the parties. Petrus Martini and Arnaldus de Valle Sicta planned a venture to Syria, Beirut, and Cyprus. In the main document, Arnald Todoni, the head butler ('majordomi') of Peroris Montisserrati invested £9 1s. in the form of what appears to be a type of plant ('paliteria salueyina').[163] This main agreement did not include any phrases referring to the judgement of the travelling party, and included no reference to the faith,

[160] Ibid., 81r [subsidiary document 4].
[161] Ibid., 80v [subsidiary document 2].
[162] AHPB, Jaume Ferrer 19/6, 35v3; the investor from subsidiary document 3, Petrus de Galliners, also invested in a voyage recorded by Jaume Ferrer in 19/5, 97r-99r, with the travelling party made up of Nicholaus Sermona and Eymericus de Dusay.
[163] AHPB, Jaume Ferrer 19/5, 92v-93v; 'Pelitre' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/12557; 'Salvagine', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/15248; 'Saluayne' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/15245.

honesty, or the reputation of the merchants. It only included the risk-management techniques of the pledging of all goods, the renouncing of the exception of counting money, and two promise phrases stating that the travelling party was to use the investment to return cloves ('girofla') to the investing party.[164]

In the second subsidiary document of the agreement, the investor, G. de Costabella, originally granted discretion for the travelling party to choose what goods should be returned using their best judgement, but later removed the phrase (Figure 6.2). Most subsidiary documents did not refer to the travelling party, using the main document as framework for the subsidiary relationship. However, Costabella's investment agreement listed a new travelling party: Saluator de Gris and Petrus de Castello. They accepted the investment of £368 4s. 10d., in the form of cloth, lead, and tin, presumably for the same voyage as the main document, to Syria, Beirut, and Cyprus.[165] The parties decided to cross out a substantial amount of text, removing the option for the travelling merchants to use their judgement to decide in which goods to invest. The result was that they were required to return with pepper.

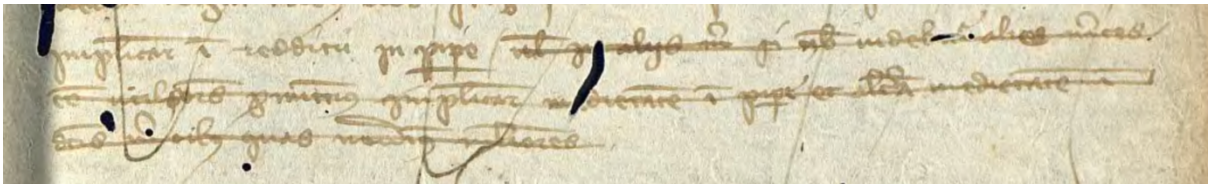


Figure 6.2: Detail of AHPB, Jaume Ferrer 19/5, 93r [subsidiary document 2]. 'implicare in redditu in pipere ~~vel per aliis merces si vobis videbitur alios merces esse meliores promitimus implicare medietatem in pipere et altera medietate in dictis mercibus quas vidimus meliores~~' ('to invest in return in pepper ~~or with other goods if it seems to you that other goods are better, we promise to pledge half in pepper and the other half in the said goods which we consider better~~').

[164] 'Girofla' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/7635; 'girofle' in "Dictionari de l'Institut d'Estudis Catalans 2", accessed 11 September 2024: https://dlc.iec.cat/Results?DecEntradaText=girofle&AllInfoMorf=False&OperEntrada=0&OperDef=0&OperEx=0&OperSubEntrada=0&OperAreaTematica=0&InfoMorfType=0&OperCatGram=False&AccentSen=False&CurrentPage=0&refineSearch=0&Actualitzacions=False#.

[165] AHPB, Jaume Ferrer 19/5, 93r [subsidiary document 2].

It may have been that Costabella decided that, for some reason, he specifically required pepper. However, the original decision to allow the experience and judgement of the merchants to shape the investment shows that there was a stage when he was more flexible to creating a relationship based on greater trust in their abilities and professional characters.

The main document has 13 subsidiary documents which used a variety of methods to specify how the goods were to be invested. Some simply stated that they wanted a specific type of good returned. In the first subsidiary document, Subirane, widow of Galterandus Carbonis, invested £130 40s. in the form of various goods. She was to receive pepper and cloves in return, stated simply using the infinitive of the verb to sell: 'Emerciare centum libras in pipere. Et residuum in girofla' ('to purchase £100 in pepper and the rest in cloves').[166] Others used promise phrases to designate which goods should be returned. B. de Strada's investment of £83 60s. 5d. in the form of various goods was to be used to buy pepper: Arnaldus de Valle Sicta promised that he would sell and invest in pepper: 'promittunt vendere et implicare in pipere'.[167]

Two subsidiary documents in the same set granted discretion through judgement. The first related to an investment by Arnaldus de Angulo of £34 14s. 11d. in the form of silver and cloth. The travelling party was allowed to return goods according to their judgement: 'emerciare in laca ginzibero colomi vel in aliis mercibus quas noverimus meliores'[168] ('to invest in Lata[?],[169] Ginger, pigeons/pigeon excrement,[170] or in any other goods which we know to be best'). The second recorded an investment by Bartholomeus de Ribosicco of £155 8s. 3d. in silver, cloth, and saffron. Rather unusually, the contract specified exactly what proportion of his investment was to be used for what goods: one-third was for pepper, another third for

[166] Ibid., 92v [subsidiary document 1].
[167] Ibid., 93r [subsidiary document 3].
[168] Ibid., 93r [subsidiary document 4].
[169] I have not been able to identify what good this refers to.
[170] 'Colom', in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/21821.

ginger syrup, and another third for sugar from the load of Babylon ('Emerciare terciam partem in pipere et alteram teriam partem in gingiloe serriol et alteram teriam partem in succare de senyor a babiloni'). However, if any of these goods could not be procured ('si alique istarum mercium iuvenuri non posset'), the merchants were to buy those things and goods which they knew to be best ('possimus emerciare in illis rebus et mercibus quas noverimus meliores').[171] The phrase allowed the travelling party to use their best judgement according to the situation they were to find in the destination ports. It directly relates to the uncertainties of long-distance trade, granting discretion to allow merchants necessary flexibility to adjust to the changeable conditions.

As most of the agreements did not grant discretion with reference the judgement of the travelling party, the additional phrase explicitly placed greater trust on the abilities of the merchants, using flexibility to manage possible uncertainty. A further series of documents relating to a voyage to Cyprus, Rhodes, and Crete with a main document and 26 subsidiary documents, of which three allow for the judgement of the travelling party to choose what goods to return adds credence to the personal nature of the phrase.[172] The varied expressions used in the subsidiary documents created relationships of a different nature, all as a part of the same trading venture. Interpersonal relationships can thus be seen to have affected the trust work done in even the briefest documents.

[171] AHPB, Jaume Ferrer 19/5, 93v [subsidiary document 7].
[172] Ibid., 97r-99r.

6.4.3: Partnership agreements - contracts of intense trust work

Following the pattern previously demonstrated, parties in partnership agreements granted discretion explicitly related to judgement in order to set up intense trust relationships. While most agreements with discretion referring to ability or judgement were *comandas*, (186 out of 211), it was also included in 13 partnership agreements, combining it with various trust work phrases. A comparison of two detailed examples evidences this phenomenon effectively.

Unlike other forms of contract, partnerships included agreements to use discretion based on judgements to avoid damage and harm to the agreement, a phrase not found in any *comanda* agreements. On 30 July 1314, Guillemus de Fonolleco, Berengarius Ferrarii, B. Costoy, and B. Martini, all labelled as citizens of Barcelona, formed a partnership that was to endure for a voyage to Cyprus and back and then continue 'for as long as it pleases the parties' ('duraturam inter nos quamdiu erimus in hoc viatico […] et deinde quamdiu nobis omnibus placuerit').[173] The agreement included a strong statement about the sincerity and future behaviour of the partners to each other. They promised each other to be faithful and lawful partners ('promittimus nobis adinvicem quod erimus fideles et legales socii') and to act and promote mutual benefit and advantage as much as they could ('tractabimus et procurabimus in quancum poterimus bonum et utilitatem nostram'). Each of them was also to avoid any damage as much as they were able ('dampnum in quancum poterimus evitabimus'). Fonolleco, Ferrarii, Costoy, and Martini also agreed to settle the account with each other as often as any of them needed and speak truthfully, creating an obligation of sincerity and accountability to each other: 'computabimus adivicem supra predictis quando et quociens inde adinvicem fuerimus requisiti. Et dicemus nobis adinvicem de omnibus veritate' ('we will settle accounts with each other regarding the aforementioned whenever and as often as we may be mutually required to do so. And we will speak the truth to each other in all matters').

[173] AHPB, Pere de Torre 6/1, 96v2-97r.

The trust work in the document relied on the best intentions of the parties to deal with the heightened risk of shared mutual advantage in the partnership formation. The mutual risks accepted by the partners were highlighted by multiple references to the group as one, as well as the acknowledgement that not all actions could be guaranteed; they instead created the agreement with implied high levels of discretion including the obligation to try their best in the future situations they would encounter. Additionally, that the partners stated they would do their best to avoid loss, shows an awareness of the unpredictability of mercantile ventures. They were at once acknowledging this difficulty and placing their trust in each other that they would use their abilities to decrease the chances of loss and damage to the business as much as possible. These were not verifiably deliverable obligations but attempts to promote behaviour guided by ability and professional judgement.

Comparatively, the original partnership agreement contained more faith and truth words than *comanda* investments in which the same men were involved. A second voyage to Cyprus in November was planned by the merchants between 6 and 13 September 1314, though the folio is too damaged for detailed analysis.[174] On 13 September 1314, Ferrarii, Fonolleco, Martini, and Costoy received an investment from a now lost investor. This document too cannot be analysed due to damage.[175] However, on the same day the partners took an investment of £40 in the form of 100 Islamic bezants ('Centum bisancios sarracenis') from Bonanatus Ferrarii, presumably a family member of Berengarius Ferrarii though the relationship was not recorded, for the voyage to Cyprus.[176] The partners promised to 'faithfully' include the investment along with their goods ('Promitimus fideliter implicare simul cum rebus nostris').[177] In another *comanda* contract, Costoy received £150 from P. de Rocha on 6

[174] Ibid., 124r.
[175] Ibid., 126r2-126v.
[176] N.B. names which included the prefix "Bona" may have signalled ties to the Jewish community, as bona was the Latinization of "ben". Bonanantus (or Bonanat in modern Catalan) cannot confidently be identified as Jewish, however, as he was not labelled as Jewish in the notarial contract and the name is known to have been used by Christian men. See, for example, Ferrer i Mallol, "Sobre Els Orígens," 148.
[177] Ibid., 126v1.

September 1314, presumably for the same voyage, to Crete and Cyprus.[178] The other three partners were not recorded as receiving the investment with Costoy. Instead, this was a personal investment, received by him alone and to be invested along with his own personal goods and merchandise, which he was presumably using, through his partnership. There were no explicit promises or faith language included.

The two *comanda* investments presented different relationships. Bonanatus Ferrarii was specifically investing in a preexisting partnership, in which four individuals promised to act together to use his investment. Rocha, on the other hand, invested with one of the partners individually. All of these documents appeared in the same register; the partners and investors all used the notarial services of Pere de Torre. Nevertheless, the trust work done by the documents was different.

A detailed look at all the elements of two partnership agreements demonstrates the intense trust work that this form of contract was doing, combining a variety of risk, character, and uncertainty-management. Poncius de Boladres and Guillelmus de Perereda formed two partnership agreements in 1336 and 1337. On 9 May 1336, with the aid of the notary Llorenç de Canals, Poncius de Boladres and Guillelmus de Perereda formed a partnership to last three years, and thereafter, for as long as they remained in agreement, with £700 worth of goods to start their business.[179] The partnership was for 'buying and selling goods' as seemed useful to them ('emendis et vendendis mercibus, […] que nobis et utrique nostrum utiles videantur') and otherwise negotiating, trading well, justly and lawfully, as best they could ('negociando et mercando bene, juste et licite, prout melius poterimus'). They agreed and promised each other mutually to trade, negotiate, and, God willing, profit as best they could in good faith ('convenimus et promittimus alter nostrum alteri ad invicem […] mercabimur, negotiabimur et, [domino con]cedente, lucrabimur, prout melius poterimus bona fide'), buying and selling justly,

[178] Ibid., 118v3.
[179] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 32.

lawfully, faithfully and legally, by land, by sea, and by freshwater, in any parts and places that seemed appropriate to them ('emendo et vendendo […] juste et licite, fideliter et legaliter, tam per terram quam per mare quam etiam per aquam dulcem, in quibuscumque partibus et locis nobis et utrique nostrum visum fuerit faciendum').[180] They further promised to be faithful and loyal partners to each other, avoiding damage and loss, to speak and write the truth in all business matters, and to act faithfully and legally in the administration of the partnership, acting in good faith. They mutually promised that at the end of three years, or whenever requested by one of them after that time, they would come to an accurate account and divide the profits equally. Finally, they promised each other to complete and uphold the agreement and to administer the business in a firm and stable manner, without deceit or artifice. They pledged all their goods as collateral and swore by God and his four Gospels, touched physically by their hands, that they would complete the agreement, and not act against it. In relation to all matters in the agreement, the parties promised to each other and to the notary as a public person who could represent any interested future parties.

On 30 September 1337, Boladres and Perereda returned to the notary Llorenç de Canals to add a third man to their partnership. Franciscus de Matacans was admitted into the previously contracted partnership, and the new partnership between the three was to last for 3 years, running from the date of the previous contract, 9 May 1336. Matacans was added as if he had been part of the original partnership and was a 'principal partner' ('socius principalis').[181] The same phrases as the original were repeated in this agreement, though the purpose of the partnership was not declared, as it was in the original. However, some promises were written as if from the two original partners, Boladres and Perereda, to Matacans. The verbs were still in the first person plural, but now they were promised to Matacans, using the pronoun 'vobis'. They promised Matacans to trade and profit as best they

[180] Ibid.
[181] Ibid., doc. 37.

could, with God's favour, justly, and lawfully, faithfully and legally, by land, by sea, and by freshwater, in any parts and places that seem appropriate to each of them.[182] Later promises were between all three men; they agreed to speak and write the truth 'to us and to you' ('dicemus et scribemus et dici et scribi faciemus nobis et vobis ad invicem veritatem'). Boladres and Perereda also promised Matacans that when he or a representative of him requested, they would come to an accurate and lawful account of the business and split the profits according to the share of capital (£100) that he contributed to the partnership.

The major difference between Boladres' and Perereda's two agreements in 1336 and 1337 was that the latter ended with a statement by Matacans in which he responded to the promises made by the two main partners. Like them, he stated that he would trade as it seemed best to him ('mercabor et negotiabor, prout melius michi visum fuerit faciendum'), in whichever places seemed best to him ('in quibuscumque partibus michi melius videantur'), and invest in merchandise as seemed useful to him ('merces et bona et impositiones, que michi utiles videantur').[183] He promised to be faithful and lawful and provide an accurate and lawful account of the business, speaking and writing the truth and behaving faithfully, 'not deviating in any way from the path of truth' ('non recedendo ab aliquo a tramite veritatis'). None of the three men swore an oath at the end of this agreement. While the new partnership contract contained vastly similar risk, character, and uncertainty management, there was emphasis on the role of the new partner, who individually promised to behave in a certain manner, faithfully, honestly, and flexibly.

Finally, partnership agreements particularly highlight how parties referred to the power of God to acknowledge the limited extent to which partners could manage uncertainty. References to God also created flexibility for the partners. Boladres and Perereda agreed and promised to each other that they would trade with the goods which 'the Lord God and His

[182] Ibid., doc. 32.
[183] Ibid.

grace will add to the said partnership' ('bonis, que dominus Deus et ipso etiam annuente auxerit societati predicte'), emphasising that the success of the venture was uncertain and unmanageable.[184] Boladres and Perereda also agreed 'to search, buy, trade, and, God willing, profit' ('precassiabimus, mercabimur, negotiabimur et, [domino con]cedente, lucrabimur').[185] Both agreements ended with an acknowledgement of the risks of the business, and that the will of God would decide the outcome, accepting the financial risk and acknowledging the unknown outcome of the venture. Both times, all the partners accepted the risk ('nostrum redegum') and also stated that the profit of the partnership would be at the will of God: 'bona dicte societatis eant, maneant et sint ubique ad voluntatem domini Dei' ('the goods of the said partnership going, remaining, and being everywhere at the will of the Lord God'). [186]

Partnership contracts were full of detailed and complex trust work; not only did they combine risk, person, and uncertainty management, granting discretion with little constraint and using the judgement of a party, they also underlined, through their reference to the power and will of God, that the business that the men were undertaking could not be controlled. Each partner could only do their best.

[184] Ibid.
[185] Ibid.
[186] Ibid., docs. 32, 37.

6.5: Conclusion

Parties to contracts used discretion and constraints to varying degrees as a response to the uncertain world of long-distance trade on the Mediterranean. By choosing to include a level of discretion or constraint that suited each relationship, merchants and investors were able to manage risks and build a level of flexibility into the agreement needed for each situation and particular relationship. A small proportion granted some discretion to the travelling party, allowing them to make future decisions based on knowledge and experience and to work according to their best judgement, demonstrating that flexibility was a central technique for managing uncertainty. Some discretion was limited by particular constraints, however. While one party might be granted the ability to make decisions in the future, the other might be held to particular requirements, such as specifications that they were to repay whenever or whoever the investing party wanted. These constraints placed the travelling party into a subordinate and insecure position. Similarly, the requirement to provide an account of the business when wanted by the investing party held the travelling party at the word of their investors, who might require information at any point.

Different responses to the management of uncertainty by parties, who balanced their needs with the granting of discretion alongside constraints and specifications, reveal how mercantile activities were planned and took place; some form of flexibility was often required. Trading ventures were planned through written notes and future communications and, when possible, allowed the most trusted parties to use their knowledge and professional experience to make future decisions.

Chapter 7 – Jews and Muslims in Catalonia within a shared culture of trust work

7.1: Jews and Muslims under Christian rule in Barcelona and Mallorca

Thirteenth- and fourteenth-century Barcelona and Ciutat de Mallorca were home to important Jewish communities, and smaller groups of Muslims. While both Jewish and Muslim individuals appeared in notarial contracts, their relationship to the notarial office and law codes of the kingdom affected how they could engage with the methods of trust work explored in chapters 2-6.

Relations between Jewish and Christian communities in the Crown of Aragon were complex and varied. Assis highlights that throughout the period under study here, 1240-1350, Jews in Catalonia were considered property of the king, and were not allowed to submit to any other jurisdiction without the king's prior consent. Jewish communities were also encouraged to emigrate to newly conquered possessions, such as Mallorca, and were central to the Crown's overseas policy of control of new lands.[1] Relations between Jewish and Christian communities were largely shaped by the king's decisions. A Jewish neighbourhood developed close to the cathedral and royal palace in Barcelona, which reflected the value that the king placed on the community, as David Abulafia argues, but also served to distinguish

[1] Yom Tov Assis, *The Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragon, 1213–1327,* 9-12; Anna Sapir Abulafia, *Christian-Jewish Relations, 1000-1300: Jews in the Service of Medieval Christendom* (Routledge, 2015), 112-113, 118-119.

them from Christians.[2] After the requirement made by Lateran IV that Jews and Muslims wear clothes which distinguished them from Christians, Jaume I assured Honorius in 1220 that the Jews of his kingdom were already distinguishable through their clothes.[3]

While Jaume I (r.1213-1276) allowed a level of freedom of speech to the Talmudist Nahmanides in the Disputation of Barcelona in 1236 and was strongly opposed to coercion and pressure to force the conversion of Jews, under Pere III of Aragon (r.1276-1285) violence against Jews spread more quickly, encouraged by anti-Jewish sermons.[4] Jewish activities were increasingly relegated to a secondary position, forcing Jews to stop craftwork and commercial tasks.[5] Jews were also increasingly confined to their own neighbourhoods, though Anna Abulafia reminds us that there was often a gulf between theory and practice, as Jews owned property outside their section of the city and Christians bought houses and ran shops in Jewish quarters.[6] Under Jaume II of Aragon (r.1291-1327) Dominican sermons became highly antagonistic, such that in 1296 the Jews of Mallorca complained about facing increased dangers from Christians.[7] In 1299, Jaume II granted permission for Ramon Llull (1232-1315) to preach on Saturdays and Sundays in synagogues and mosques throughout the Crown of Aragon.[8] Contracts with parties in different religious communities need to be seen in this context of debates full of asymmetrical power relations (see, for example, Llull's *The Book of the Gentile and the Three Wise Men*, written c.1274) and pressure to convert.

Alfonso III of Aragon (r.1285-1291) started to create a separate Jewish quarter in Ciutat de Mallorca. By 1290 there was a space in the south-eastern part of the old city for the Jewish community. This space was to include a new synagogue, a separate butcher's shop, and a bake-house. A wall with doors and gates was to be put around the space, called the *call* (the

[2] Abulafia, "Catalans," 511-512.
[3] Abulafia, *Christian-Jewish Relations,* 115.
[4] Assis, *Golden Age*, 3
[5] Sabaté, "Identities," 451; Abulafia, "Catalans," 511-512; Abulafia, *Christian-Jewish Relations*, 127.
[6] Sabaté, "Identities," 451; Abulafia, *Christian-Jewish Relations*, 122.
[7] Assis, *Golden Age,* 54
[8] Ibid., 54.

term probably deriving from the Hebrew for community, *kahal*). No Jews were to live outside the *call*, which was under the king's protection, according to Jaume II's decree of 23 May 1303.[9] The strict requirement was tempered a month later on 38 June after requests from secretaries of the *aljama*. Jews could run shops outside the *call* but had to return to eat and sleep.[10] In 1296, Jaume II prevented preachers from entering the space without permission from one of his representatives. However, in 1315, Sancho of Mallorca removed all their privileges and confiscated their property as a result of the conversion of two German Christians to Judaism in Mallorca. The next king, Jaume III of Mallorca (r.1324-1344), re-granted the right for a synagogue in the *call* in 1331.[11]

The Muslim communities of the Crown of Aragon faced a rather different reality from the start of the period. The conquests of Barcelona (801) and of Mallorca (1229-1232) saw the removal of most of the Muslim population. While Barcelona had been Christian-ruled for centuries before 1240, Mallorca was only recently conquered. The majority of the defeated Muslims in Mallorca were captured and apportioned to the conquerors as spoils of war.[12] Nevertheless, a small minority remained in south Catalonia, Aragon, Valencia, and Mallorca.[13] Some Muslims remained on the island, as freemen, now subject to payment of a tax for staying (*dret d'estada dels sarraïns*).[14] Those who wanted to leave and emigrate to Menorca, Valencia, the Maghreb or Granada had to pay an exit tax (*dret d'eixida dels sarraïns*).[15]

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[9] Abulafia, *Christian-Jewish Relations*, 123; David Abulafia, "From Privilege to Persecution: Crown, Church and Synagogue in the city of Majorca, 1229-1343," in *Church and city 1000-1500. Essays in honour of Christopher Brooke*, eds. David Abulafia, Michael J. Franklin, and Miri Rubin (Cambridge University Press, 1992), 117-118, 120; Antonio Pons, *Los Judios Del Reino de Mallorca Durante Los Siglos XIII Y XIV* (Consejo Superior de Investigaciones Científicas, Instituto Jerónimo Zurita, 1958), 19-20.

[10] Pons, *Los Judios*, 20.

[11] Abulafia, *Christian-Jewish Relations*, 124; Abulafia, "Privilege to Persecution", 122-124.

[12] Antoni Riera, "The feudal partitions of Mallorca and their immediate consequences (1230-1245)," *Catalan Historical Review* 10 (2017): 9-10; see also on the emigration of Muslims from Catalonia, Brian A. Catlos, *The Victors And The Vanquished: Christians and Muslims of Catalonia and Aragon, 1050-1300* (Cambridge University Press, 2004), 100-106

[13] Sabaté, "Identities," 451; Abulafia, "Privilege to Persecution", 114-115.

[14] Riera, "feudal partitions," 10.

[15] Ibid., 10

Nevertheless, both local and foreign Muslims continued to be a part of the long-distance trade organised and carried out from Mallorca. The earliest notarial registers show Muslims involved in Maghribi trade and, in 1270, Jaume I allowed Ibrahim ben Halaf, a Muslim from Valencia to buy a ship and set up a trading company for trade on the Barbary coast.[16] Catlos notes that Mallorca was a centre of activity for merchants from Tunis and Bougie in the fourteenth century, as a space connecting North Africa and Latin Europe.[17] He says that *comandas* and trade agreements between foreign Muslims, and local and North African Jews, Christians, and *mudéjares* were evidently common, though no specific notarial registers are referenced.[18] Valerian, too, notes that Ifriqiyans visited Catalan ports and that the kings of Aragon recognised the profits which could be made from Muslim merchants arriving for trade from the Maghreb, to Mallorca and Valencia, from the end of the fourteenth century.[19]

One of the main questions the rest of this chapter seeks to answer is whether the status of Muslims and Jews in the Crown of Aragon affected the way in which these individuals were part of trusting relationships constructed within notarial contracts and whether the same trust work mechanisms and language was used. Winer argues that, in the Crown of Aragon, Jews were 'less trusted', with the result that they were required to sign and swear oaths when Christian parties were not. She references Hebrew declarations and signatures on Latin protocols from Perpignan. While some have seen this Hebrew writing as a sign of Jewish identity, Winer argues that the Jews were obliged to sign and state a declaration by the Christian notaries.[20] Looking at the protocols of the notary Pere Calvet, active in Perpignan in the 1260s, Winer finds that Jewish parties often signed and spoke a declaration while there is no evidence of Christian signatures.[21] Winer argues that this is

[16] Riera, "Beginnings," 225.
[17] Brian A. Catlos, *Muslims of Medieval Latin Christendom, c.1050–1614* (Cambridge University Press, 2014), 259.
[18] Ibid., 259.
[19] Dominique Valerian, "Ifrîqiyan Muslim Merchants in the Mediterranean at the End of the Middle Ages," *Mediterranean Historical Review* 14, no. 2 (1999): 52-55.
[20] Winer, "Jews," 128.
[21] Ibid., 114.

evidence of a 'legal environment in which Jews were suspect' and that Crown law placed Jews under the authority of the notary and Christian creditors.[22] This made the position of Jewish men in relation to the Christian notary somewhat analogous to that of Christian women. Winer argues that both 'had more legal hoops to jump through than Christian men, such as special oaths to take, and they both possessed less Latin literacy than elite Christian men.'[23] This chapter seeks to explore whether the notarial contracts support this view.

Jewish and Muslim inhabitants of the Crown of Aragon appeared as investors and travelling merchants in a minority of the documents of the set. This allows comparisons to be made with agreements made between Christian parties, but definitive conclusions may not be possible on the basis of this evidence.[24] However, they demonstrate that Jews and Muslims took part in a shared language and methods of trust work. There are 42 contracts which involved a Jewish party.[25] 29 of these were inter-religious agreements in which a Christian and a Jewish party formed a relationship (one of these is likely to have been a Muslim-Jewish contract, though the Muslim party's religion was not labelled). 13 were contracts in which both sides of the agreement were Jewish. Ten contracts involved a Muslim party. All of these agreements were inter-religious, in which a Muslim party made a contract with a Christian party. This means there is a total of 39 inter-religious contracts in the set. A further 16 involved Muslims as slaves, as goods to be traded or as collateral.[26] There is a significantly greater number of documents involving slaves in the registers which did not involve long-distance trade and so are beyond the scope of this present study.[27] Jews and

[22] Ibid., 130-132.
[23] Ibid., 122.
[24] Abulafia, "Catalans," 511-512.
[25] For references to each contract referred to in this paragraph, see Table 1.1.
[26] ARM, ECR 342, 32v2, 102r2, 144r3, 144v5; ARM, ECR 343, 152r1, 159r2, 159v4, 273v1, 415v3-416r; ARM, ECR 344, 168v, 205r3; Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales,* docs. 1, 2, 5; ACM, PRT-14540, 11v4-12r; ACM, PRT-14566, 7r2-7v.
[27] There is a growing literature on slavery in Catalonia, e.g. Iván Armenteros Martinez, "Ritmos y dinámicas de un mercado de esclavos (1301-1516)," in *Les Esclavages en Méditerranée*, eds. Fabienne P. Guillén and Salah Trabelsi, (Madrid, 2012): 101-117; Teresa Ferrer i Mallol and J. Mutgé i Vives (eds.), *De l'esclavitud* a *la llibertat. Esclaus* i *lliberts* a *l'edat mitjana* (Barcelona: Consell Superior d'Investigacions Científiques, Institució Milà i Fontanals, Departament d'Estudis Medievals, 2000); Ferrer Abárzuza, "Contracts of Talla"; Roser Salicrú i Lluch, *Eslaus i popietàries d'esclaus a la Catalunya*

Muslims should not be treated as one group, as each community faced different circumstances across the period. This chapter seeks to investigate if membership of a religious community impacted the way in which trust work was conducted and negotiated in the notarial office, including both Jewish and Muslim parties, and their contracts with each other and with Christians.

del segle XV: L'assurance contra fugues (Madrid: C.S.I.C, 1998); Roser Salicrú I Lluch, "Slaves in the Professional and Family Life of Craftsmen in the Late Middle Ages," in *La famiglia nell'economia europea. Seccoli XIII-XVIII/The Economic Role of the Family in the European Economy from the 13th to the 18th Centuries*, ed. Simonetta Cavaciocchi (Florence, Firenze University Press, 2009); Catlos, *Muslims*, 269-280; Mark D. Meyerson, "Slavery and the Social Order: Mudejars and Christians in the Kingdom of Valencia," *Medieval Encounters* 1, no. 1 (1995); Mark D. Meyerson, "Slavery and Solidarity: Mudejars and Foreign Muslim Captives in the Kingdom of Valencia," *Medieval Encounters* 2, no. 3 (1996); Charles Verlinden, "L'esclavage dans la Péninsule Ibérique au XIVe siècle," *Anuario de estudios medievales* 7 (1970).

7.2: Jews and Muslims and the Catalan notary

Jews and Muslims who appeared in the documents will have been face to face with a Catalan notary at some point in the creation of the contract. Whether in the street or in the notarial office, they may have faced linguistic difficulties, as the contract was constructed in Latin, and faced decreased agency, surrounded by Christian royal appointees. Nevertheless, non-Christians in the documents seem to have taken part in the negotiation processes outlined in chapter 2. Like their Christian counterparts, Jewish and Muslim merchants relied upon the skill and training of the notary, as well as the ability of the notary to work according to the particular needs of the parties, to produce a document which was legally valid and included the desired trust work, using risk, character, and uncertainty-management mechanisms in order to make the investment or venture appropriate and beneficial. Through their choice to go to a notary, they placed their confidence in the notarial institutions and the validity and longevity that it would provide for the contracts.

The extent to which use of Christian notaries by the Jewish and Muslim populations was an open choice has been debated by scholars. The Jewish and Muslim minorities of the Crown of Aragon had their own official secretariat.[28] Jewish communities were authorised to have their own scribes and scribal offices for the creation of Hebrew and Aramaic documents, at least from the mid-thirteenth century, according to Winer.[29] These scribes were called *sōfer/sofrei* but in the Crown of Aragon were assimilated in the records labelled as part of the Christian notarial institution, though not labelled as notaries.[30] While they were not the same as the Christian notary institution, Winer argues that by the later thirteenth century, they had gained legal knowledge becoming much more than simple scribes.[31] These men were salaried community bureaucrats, essentially secretaries to the community and used to create official

[28] Burns, *Jews*, 33-49.
[29] Winer, "Jews," 115.
[30] Burns, *Jews,* 44-49.
[31] Winer, "Jews," 119.

records and correspondence, but also acting as 'all-around Hebrew scribe[s]', able to draft marriage, dowry, divorce, commercial, power-of-attorney, testamentary, commercial, promissory, or other contracts called *shetar/shetarot* (שְׁטָר) for a fee.[32] Hebrew scribes kept a record book or register, like Christian notaries, but followed the Jewish calendar when recording the date of document creation. Like their Christian counterparts, they served the Jewish courts as well as creating documents for individuals.[33] There may also have been separate private scribes; there is evidence of three Jews who signed Christian debt documents in Barcelona as *scriptor* in 1248, 1280, and 1282.[34]

Many documents referring to the appointment of men as Jewish scribes by the king survive and present a complex entanglement of language and religion. In 1258, a privilege to Barcelona gave Christians of the city rights to elect notaries and gave a special writing office to the Jews.[35] A crown privilege of 1271 granted to 'all the Jews of Gerona and Besalú and of other places belonging to their [tax] collectory' that they might 'may draft and cause to be drafted Christian [christianica] or Hebraic documents' concerning promises, dowry, marriage, purchase, rent, and sale, according to their customs, 'both between a Jew and a Christian as well as between a Jew and a Jew.' The king ordered all notaries of these places to respect this arrangement. In 1318, Jaume II granted the Jewish *Scribania* of Valencia to Jahudà Adarra and his descendants.[36]

Burns argues that before 1300, the institution of the *sōfer* and Jewish communities more generally had a large amount of freedom. While scribal production was not always given 'quasi-notarial standing' the communities had freedom and/or input in selecting a scribe. The situation of Jewish *Scribania* changed after 1300 as in 1301 Jaume II decreed that in Aragon

[32] Burns, *Jews,* 43-44; Winer, "Jews," 115.
[33] Winer, "Jews," 119.
[34] Burns, *Jews,* 45.
[35] Garcia i Sanz, "Precedents," 174.
[36] Burns, *Jews,* 47.

documents which involved a Christian party had to be recorded in the register of a Christian notary.[37]

Crown privileges also ensured the recognition of Hebrew documents in law courts. In 1252, Jaume I issued a privilege to the Jewish community of Mallorca stating that 'instrumenta iudaica' (Jewish documents) relating to marriage contracts were to 'have the same validity as if they were drawn by Christian public notaries' which Burns suggests may have been representative of general practice in the Crown of Aragon.[38] A similar situation is evidenced in Valencia when in 1292, a charter by Jaume II to 'the whole community of the Jews of Valencia present and future' stated that 'all charters or Hebrew documents drawn or to be drawn about any activities entered or to be entered between any Jews' were to have the same effect as 'in the times of the illustrious lord king Jaume and lord king Pere, those charters or Hebrew documents were accustomed to be observed and used.'[39] Cases involving Jews and Christians were common in the various different courts of the Crown of Aragon, including municipal and episcopal courts.[40]

In Muslim communities in the Crown of Aragon, the *ṣāḥib al-wathā'iq* (صاحب الوثائق) appears in documents as a scribe with a *scribania*. Evidence survives of crown appointments to this role from the thirteenth century, in the lands of Aragon and Valencia (presumably due to the higher numbers of Muslim occupants in these parts of the *Països Catalans*): in 1271, Jaume I conferred on Muḥammad, the son of Ismā'il, lifetime tenure as scribe for the *Mudejars* of Borgia; in 1278 Pere confirmed the previous appointment by Jaume of Ḥasān b. Faraj to the offices of *qāḍī* and scribe 'of the Saracens of Zaragoza […] for making all Arabic [sarracenica] documents'; in 1280, Pere appointed Muḥamad of Salā as *qā'id* (leader) and scribe of the Saracens of the Moorish quarter of Valencia city' with the same conditions held

[37] Ibid., 48-49.
[38] Ibid., 51.
[39] Ibid., 52, doc. 33.
[40] Burns, *Jews,* 51-72; Abulafia, "Privilege to Persecution", 115.

by previous post holders.[41] In Catalonia, evidence survives of the appointment of two men as *qāḍī* and scribe in Lleida: Muça de Marrochs, appointed in 1263 and Ovecar de Bellvís, in 1370.[42] Mutgé suggests that Muslim scribes were authorised to write documents including agreements, sales/purchases, marriage contracts, and testaments.[43] After the conquest of Valencia, Jaume I began to act as a court of appeals for his Muslim subjects; Burns references a trial adjudicating water rights which had been passed to him from the Muslim courts of the two previous rulers.[44] Mallorcan Muslims may have faced a different reality, however, as Abulafia notes that Muslims on the island did not have a community organisation reorganised by the crown or *mudéjar* status, as existed in Valencia.[45] Whether similar scribal positions existed is uncertain.

With the possibility of equivalent notarial services in the Jewish (and possibly Muslim) communities, the appearance of Muslim and Jewish parties and witnesses in Christian notarial records becomes all the more notable. A royal decree stated that documents drafted by Jewish scribes held the same legal validity as those written by Christian notaries.[46] Muslim and Jewish scribes are here seen as equivalent to the 'notary' for the benefits of comparison, despite their different cultural and social contexts.[47] In her study of Jews in Christian notarial culture in thirteenth-century Perpignan and Barcelona, Winer sees the two as somewhat interchangeable, asking why, if both were a valid option for the Jewish community, would a Jewish client choose one over the other.[48] She suggests that Jewish clients may have chosen the notary best suited to the situation, arguing that a transaction might be registered with a Christian notary if Jewish clients felt they had a legal or financial matter than might be

[41] Burns, *Jews,* 34.
[42] Josefa Mutgé Vives, *L'aljama sarraïna de Lleida a l'edat mitjana: aproximació a la seva història, Anuario de estudios medievales* (Institució Milà i Fontanals, 1992).
[43] Ibid., 40.
[44] Burns, *Jews,* 37.
[45] Abulafia, "Privilege to Persecution", 115;
[46] Winer, "Jews," 119.
[47] Burns, *Jews,* 32-50.
[48] Winer, "Jews," 115.

vulnerable to challenge from the Christian community; use of a Christian notary was about security.[49] In his study of Latinate Jewish wills, Burns questions whether the Christian notary and the *sōfer* were rivals for business suggesting that rather than competing, the two institutions worked alongside each other, with Jewish customers choosing the scribe best suited to their situation or registering agreements with both offices. For Burns it was about preference, without particular cultural meaning. He argues that it was common for Jews to have testaments, sales contracts, or debts drawn up by both authorities, in both languages, especially when the transactions were between Jews and non-Jews. The two contracts would not have been bilingual or copies but instead each followed the relevant juridical tradition and expression.[50]

Yet overall, the views of Winer and Burns are quite different. Burns tells a story of adaptation and negotiation. He highlights the ties between the Jewish and Christian communities. He argues that the Jewish communities of the Crown of Aragon 'constituted full societies' with social strata and mercantile patterns that 'mirrored and meshed with the Christian society around them' which allowed them to adjust to Christian society, while conserving their own.[51] However, Winer tells a story of separation and conflict, highlighting that from the mid-thirteenth century onwards, the crown taxed and regulated Jewish scribes and encouraged Jews to employ the services of Christian notaries instead to increase revenues and royal control.[52] Despite Abulafia's suggestion that Hebrew notation in Latin protocols from Perpignan show that there were advantages to using Latin legal forms, Winer suggests that arguments based on convenience and choice can be overstated. She highlights the impact of royal and urban authorities on Jewish choices. It should not be forgotten that, in the mid-thirteenth century, if a Jew lent money to a Christian and desired a written contract,

[49] Ibid., 122-123.
[50] Burns, *Jews,* 46-49,
[51] Ibid., 38.
[52] Winer, "Jews," 115.

they were legally bound to go to a Christian notary and record the transaction in Latin.[53] The ways in which Jewish businessmen negotiated Latin legal culture does not show positive interaction, she argues, but instead shows a 'more tangled' situation of both attraction and coercion.[54]

The creation of notarial registers dedicated to transactions involving Jews, labelled in the singular *Liber iudeorum,* show that Jews often employed the services of Christian notaries. Sometimes a monopoly was created by city authorities which provided a Christian notary, or group of notaries, with the right to all work involving Jews.[55] However, Burns suggests that this was highly variable and depended on local situations and privileges.[56] Indeed, in 1360, the *Corts* of Aragon allowed Jews to choose any Christian notary, voiding attempts to confine Jewish business to a monopolist Christian notary.[57] Burns notes that Jews appear in Christian wills in a variety of positions, 'as legatees, witnesses, creditors recovering sums, agents acting for a will's executor, or simply someone who finds himself enmeshed in the deceased's unfinished business.' Burns argues that this was common, as both Jews and Christians were commissioned or licensed as public brokers for purchases and sales.[58]

Burns highlights that the large number of Jewish business documents entered into registers of Christian notaries demonstrates the great 'personal and commercial overlap' which joined the two societies and allowed Jews to operate easily in Roman law and conduct financial agreements.[59] While many bilingual property transactions between Jews and Christians in Barcelona survive from the eleventh century, Winer argues that by the thirteenth century there were many more Jewish clients engaging with Christian notaries.[60]

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[53] Ibid., 123; Abulafia, *Mediterranean Emporium,* 94.
[54] Winer, "Jews," 132-133.
[55] Winer, "Jews," 126; Burns, *Jews,* 41.
[56] Burns, *Jews,* 41-43.
[57] Ibid., 48-49.
[58] Ibid., 49-50.
[59] Ibid., 30.
[60] Winer, "Jews," 122.

Despite the frequency of Jewish involvement with Christian notaries, we must not forget the difference of access, including linguistic access. Reyerson suggests that merchants from France, Catalonia, and Italy would have been able to function in the necessary languages of the various regions and frequently appeared before notaries of towns of foreign regions to transact business with the same ease, it seems, as native merchants. While the different origins of clients are always noted, it appears that no other accommodations were made.[61] However, Latin, the common language of notarial practice, may not have been particularly accessible to native merchants. Epstein suggests that some Genoese would find the Latin of notarial documents 'incomprehensible' but suggests that it is likely that the simple and repetitive phrases of *comanda* documents would have been more accessible.[62] Winer agrees that Jewish merchants and financiers would have communicated with notaries and fellow parties to a contract in Catalan. She also notes, however, that while Jewish merchants and financiers may have read a little Latin, they would not have been able to write the Latin alphabet. Winer references Latin charters with Hebrew notes on the back to suggest that the specialised Latin of contracts might have been a barrier to Jewish clients;[63] perhaps the notes were the main way that clients kept track of their transactions, unable to read the Latin as a reminder. Linguistic and cultural differences also affected the relationship between Muslim communities and Christian institutions. Burns too suggests, particularly in the Kingdom of Valencia, with a large Muslim community, the language barrier and cultural divide would have been wide and affected their relationship to the notarial and legal institutions.[64]

Most of the contracts in the set which involved non-Christians were inter-religious relationships. This means that these 39 non-Christian parties would have needed to use the Christian notarial institution in order to create a written record between people of different religions. There is little discussion of Christians using Jewish and Muslim scribes. However,

[61] Reyerson, 'Merchants," 5.
[62] Epstein, "Secrecy," 319.
[63] Winer, "Jews," 120-121.
[64] Burns, *Jews,* 37.

13 agreements were written between Jewish parties by Christian notaries. These parties must have chosen to have their business recorded by a Christian notary, choosing to engage in the trust work undertaken by a man in this position. The rest of this chapter will explore what a detailed analysis of these contracts can reveal of the relationship between Jews and Muslims and notarial trust work, looking to individual interpersonal relationships and choices to understand how religious community affected trust.

7.3: Pledges, collateral, penalties, and guarantors

Chapter 4 demonstrated that risk-management techniques, in the form of pledges, monetary penalties, and guarantors carried out varied trust work as a part of the contracts; they provided assurance to investing parties that the investment would be returned, inviting them to be confident in the investment. These risk-management methods provided a straightforward way in which the investing party would be able to receive their investment back in the case of difficulties or noncompliance. Travelling parties were able to use these techniques to invite the investing parties to depend not only on their ability to carry out the work, but also on the extra methods of repayment. These techniques managed the future expectations of investing parties using extra-personal methods to build confidence and provide security in the future.

While only 43 documents (3% of the set) identified a particular object or amount of money as collateral to the agreement, three of those involved Jewish parties. 42 agreements in the whole set involved a Jewish party. As three of these involved specific collateral (7.1% of contracts involving Jews), this is more than we might expect given that only 3% of the whole set included specific collateral. While only a small difference, it suggests that Jewish-Christian relationships tended to require the trust work of the contract to provide greater assurance that the investment would be returned.

All three of the agreements present different relationships between the parties. In the first, the Jewish party invested; on 27 June 1240, P. Bay received 37.5s. from Jucef Jude Abensaymino, for a voyage made to Al-Andalus on A. Staysa's ship. As collateral, Bay handed over a cloak for a woman with rabbit fur trim ('quendam clamidem presetinnel domine cum pinia Sirogrillorum')[65] to Abensaymino.[66] In the second, two Jews made up a travelling party, taking part in a trading venture alongside their investor. On 18 August 1316 Samuel Bonafos

[65] "clamidem": This term is derived from "chlamys" or "clamys," a type of cloak or mantle; 'Cirogrillis' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/10891;
[66] ARM, ECR 343, 270v2.

and Astrugus Arnzelley, Jews of Barcelona, received 112s. from B. de Valibus, from Barcelona. The debt was to be repaid in Caller, to which Valibus was sailing with his ship. The shipmaster held various objects as collateral. The folio is damaged, such that all that can be read is the following: 'obligo vobis [__] quoddam [___]cellum in quo sunt [__] cohopertari sum [_] de sarico et de lino et de [__] s[___] et unum coxinum operate de sirico et [__]dam caxintula[?] [___]'.[67] The word 'cohopertarum' was used in the contracts to refer to the sails of ships. For example, Petrus de Balig was shipmaster of a ship with two sails called Saint Stephan ('Petrus de Balig, […], patronus cuiusdam coquæ duarum cohopertarum vocate Sanctus Stephanus'). [68] However, here it seems to refer to a type of fabric, covering, or bedspread, made from silk ('sirico'/'serico').[69] The word ending with 'cellum' may refer to *macellum*, a butcher's shop, or *vascellum*, a ship. It may also refer to capcella/capsella, meaning a box, coffer, or chest. There was also a cushion made from silk ('unum coxinum operate de sirico'). The phrase could therefore be translated as: 'I oblige to you a certain [chest/ship/shop?] in which there are [__] covered with [__] of silk and of linen and of [__], and one pillow worked with silk and a certain small box [__].' The contract show the Jews providing a series of goods, with details about their materials and composition, to the shipmaster.

The last of the three contracts with a Jewish party which involved collateral was a loan, in which a Jewish man was creditor. On 30 November 1335, Scimhe, wife of Samuelis of Bugia, borrowed 91s. 8d. from Isaach Issach, a Jew of Provence. The two were to travel to Marseille in eight days where she would repay the debt. In return, Isaach held items as collateral from Scimhe: purple cloth, a belt, a 'certunam'[?], two mattresses ('matalaffias'), and one cushion ('traverserium'). [70] Both parties 'signed' the document. As the wife of a man

[67] AHPB, Pere de Torre 6/2, 178v3.
[68] ACM, PRT-14566, 81r-81v.
[69] 'Serico' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/15370; 'Cohopertoria' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/1791.
[70] ACM, PRT-14545, 67r2; 'Travesero' in Gual Camarena, *Vocabulario*, https://www.um.es/lexico-comercio-medieval/index.php/v/lexico/15832 .

labelled to be from Bugia, Scimhe may have been Jewish (or indeed Muslim or a convert, though her use of a non-Christian name suggests otherwise). However, the text does not confirm this and, in contrast, actively labels Issach as Jewish.

In two of the agreements, the Jewish party was acting as creditor or investor. Beyond this, the three contracts share few features, making generalisations about the position of the Jewish men in comparison to other contracts difficult. It is important to note also, that no agreements involving parties labelled as Muslims used a specific collateral or pledged object. While Gento de Sarragossa and his wife Rahen must have been non-Christians/Muslims to be able to be captives and use their children as collateral, their religion was not labelled in the contract (see chapter 4).[71] Nevertheless, the set suggests that Jewish parties were slightly more likely to use a form of stated collateral than Christian parties.

The use of stated monetary penalties was also slightly more common in agreements between Christians and non-Christians. Explicitly stated monetary penalties were a straightforward method of enforcing a penalty should the venture fail or the travelling party commit a form of fraud, ensuring that the investing party would receive their investment back, which would not necessarily require the intervention of the court. 34 agreements (2.4% of the set) involved a phrase using *sub pena* or similar to set up a penalty for failure to conclude the contract. Most of these were in investments which included the chartering or sale of a ship, suggesting that the use of penalties was particularly tied this valuable possession. All were between male Christian parties except for three. Given that 39 agreements involved an inter-religious relationship, that three agreements (7.7% of all inter-religious contracts) involved a *sub pena* phrase suggests that it was more likely that inter-religious agreements required a penalty to reassure the investing party of a different faith.

Two inter-religious agreements involved the rental of a ship, following the expected patterns of the Christian contracts examined in chapter 4. In a contract written by Francesch

[71] ARM, ECR 345, 23r1-23v.

Balle on 5 December 1340, Bonanantus Sabet, patron of a ship, handed over his ship for a trading voyage to Poncius Rogerius, merchant and citizen of Mallorca, and Amore Bonallius, merchant and Jew of Mallorca.[72] Both the travelling party and investing party promised to fulfil the contract under penalty of £25 ('sub pena viginti quinque librarum') which was 'legitimately stipulated and promised to be acquired by both parties if they fail[ed] to observe the agreement' ('ab utraque parte nostrum stipulata legitime et promissa adquirenda si comunitatem'). This inter-religious agreement used a possible future monetary penalty for the loan of a ship, following the standard pattern shown in chapter 4, such that the inter-religious nature of the relationship did not affect the choice; other penalty statements follow the same form.

The second agreement saw Acmet Abenyequir, a Muslim of Alicante, hire half of the ship owned by Bernardus de Quarto de Sancto Felice of Guixols on 29 December 1247, for a voyage from Alicante to Algiers or Bougie and then to any other place he wanted, before returning to Alicante. Abenyequir was to pay £20 3s. 8d. for the rental in halves, half in Tunis (perhaps this was another possible destination) and half in Alicante. He would also pay half the customs and duty fees that the ship would incur in Alicante and Bougie/Algiers. Abenyequir was able to load his half of the ship as he wanted.[73] This was under the obligation of 150s. written in the form of collateral: 'promito hec atendere sub obligacione CL solidos regales Valencie' ('I promise to attend to this under an obligation of 150 royal solidi of Valencia'). However, the phrase functioned more like a penalty payment, taking action if Abenyequir failed to fulfil the agreement. Abenyequir's payment schedule was also laid out in more detail than was normal; this inter-religious agreement was relying to a greater extent than normal on risk-management techniques related to repayment, showing a heightened concern in relation to payment.

[72] ACM, PRT-14564, 116r2-117r.
[73] ARM, ECR 343, 243v4-244r.

The final inter-religious agreement with a stated monetary penalty was a partnership agreement, which was particularly unusual. On 27 September 1348, Maymonus ben Faraig, a Jew of Mallorca, and Franciscus Maymona, a merchant and citizen of Mallorca, formed a partnership for travel to the Barbary coast. Both agreed to a potential penalty of £100: 'sub pena etiam centum librarum Regalium Maioricæ minutorum inter nos legitime stipulata' ('under the penalty of one hundred Royal Mallorcan pounds legally stipulated between us').[74] The penalty could be paid by either party for failing to stick to the agreement. No other partnership agreements in the set included a similar penalty. As section 6.4.3 showed, it was common for partnership agreements to include an extended amount of trust language which included promises to follow the contract, though not risk-management techniques such as penalties. This inter-religious agreement was relying to a greater extent than normal on risk-management techniques related to fulfilment of the contract than other partnership agreements.

In contrast, inter-religious agreements did not use guarantors more often than intragroup agreements. Like pledges and penalties, the use of a guarantor was a risk-management technique that assured the investing party that their investment would be returned if there was a problem with the trading venture or travelling party. Guarantors were a method by which travelling parties could build confidence in the investment. Of the 25 agreements with guarantors, two included Jewish guarantors, both written in Mallorca. In both of these agreements, the main parties were Christian men. Firstly, a contract written by Francesch Balle on 13 December 1310 between Petrus Mora and Marcho de Maya for a voyage to Mostaganem contained Abraham ben Nabet, merchant and Jew of Mallorca as 'guarantor and principal payer' for Maya ('fideuissorem seu principalem solutorem'). Nabet also played a part in commissioning the ship to undertake the voyage: 'sciens me nomine meo et aliquorum consortum meorum nauleasse dictum lignum ad dictum viagium mandato dicti

[74] ACM, PRT-14569, 34v-35r.

patroni' ('knowing that I, in my name and in the name of some of my partners, have chartered the said ship for the said voyage by order of the said patron').[75] His additional role in the venture may have been a factor in his position as guarantor since he was already invested in the success of the venture. Similarly, Guillem Pera Tarasconi notarised an agreement in 1349 involving a Jewish guarantor. Laurencius Codina invested eight gold coins of Mallorca ('regales auri Maioricæ') in a voyage undertaken by Nicholaus Laurencius to Béjaïa. Jussæ Ben Zaqri, a Jew of Mallorca and the sailor of the ship, and Berengarius Baya, a citizen of Mallorca and shipowner, acted as guarantors ('fidejussores') to the agreement.[76] In both agreements the Christian travelling partners had the assistance of Jewish guarantors to add security to the agreement, placing a member of a different religious community into an important position.

The Jewish guarantors were also acting to avoid the law courts in this latter case; before the guarantors were named, the travelling partners promised to repay the investing partners without delay, damage, or loss, and without a complaint to the court.[77] The reliance on guarantors from a different religious community alongside the agreement not to take any later case to court encourages us to rethink the ways in which religious communities operated in Mallorca at this time, suggesting that religious groups were not necessarily divided or defined by distrust.[78] The Christian parties and notaries were building these trusting relationships with the aid of presumably wealthy Jewish guarantors without additional phrases suggesting that this was not an unusual or uncomfortable practice. While some guarantor relationships were set up with brief phrases and little elaboration, such as 'Fideiussor Berengarius de Montocathano' ('guarantor, Berengarius de Montocathano'),[79] in the context

[75] ACM, PRT-14564, 119v2-120r.
[76] ACM, PRT-14569, 5v.
[77] ACM, PRT-14564, 5v, 119v2-120r.
[78] Conclusions such as this could speak to much wider historiographic issues such as ideas of the Jew in Medieval Christianity or the medieval roots of antisemitism, for example: J. Cohen, *Living Letters of the Law: Ideas of the Jew in Medieval Christianity,* (University of California Press, 1999); K.R. Stow, *Alienated Minority: the Jews of medieval Latin Europe*, (Harvard University Press, 1992); Joshua Trachtenberg, *The Devil and the Jews: The Medieval Conception of the Jew and Its Relation to Modern Antisemitism,* (The Jewish Publication Society of America, 1983).
[79] ARM, ECR 342, 119r2.

of contracts written by Francesch Balle, in which both Jewish guarantors are found, the elaboration of the guarantor relationship shows no differences to Christian guarantors.

While monetary penalties and stated collateral were both slightly more common in inter-religious agreements, showing a greater concern for repayment and completion of a contract between members of different religious communities, inter-religious agreements did not use guarantors more often than agreements within religious groups. Instead, Jewish guarantors were used by Christian parties, as a figure adding weight and security to the agreement. Additionally, none of the 48 contracts which include a phrase outlining a promise not to complain to court included a Jewish party. The evidence is, as a result, somewhat contradictory. While some inter-religious agreements required additional levels of trust work through the use of risk-management techniques to manage anxieties in inter-religious relationships, sometimes Jewish parties were used by Christian parties as a form of risk-management, as guarantors. This returns us to the conclusion that, while inter-religious agreements may have tended to increase the need for trust work, the main factor was personal relationships between the parties involved in the relationship. Membership of a religious community was one factor, though not the only, or even the primary factor, affecting choices to use more or less risk-management techniques as a part of the trust work undertaken by the creation of notarial documents.

7.4: Lawful behaviour, promises, and faith

The Jewish communities of Barcelona and Mallorca took part in the same court procedures as their Christian neighbours. Burns notes that cases involving Jews and Christians were common in the various different courts of the Crown of Aragon, including municipal and episcopal courts.[80] As such, non-Christians were required to navigate the shared legal culture of Catalonia.

As shown in section 5.2, rather than playing a central part in creating a legally binding document, the inclusion of terms such as *legaliter* added an additional level of reassurance of the lawful behaviour of parties, building confidence in the ability of the party to perform their role suitably. Agreements with non-Christian parties used language relating to the law and lawful behaviour in the same way. The term *legalis* featured in only 164 contracts in the set. Only one of these was inter-religious.[81] In the set *legaliter* appeared in 72 contracts. Two of these had non-Christian parties: one agreement was between Jewish parties, the other between Muslim and Christian parties. As the use of both terms in the whole set was minimal, there seems to be little in terms of group identity affecting their inclusion. The use of the terms *legalis* and *legaliter* may instead speak to the more specific relationships being created by the contracts, included to add force to the need for actions following the law, and showing a concern in the future actions of a party, irrespective of religious identity. For example, in an agreement written by Bernat de Olives in 1318, Maldil Daychs received an investment from Jucef Barque, both Jews of Mallorca, for a trading voyage to Tunis. Daychs stated that he would use the investment along with his goods, faithfully and legally: 'illo tunc promito eas simile cum rebus meis emerciare protractare fideliter et legaliter.'[82] This use follows the same pattern as the other phrases and no other agreements involving Jewish parties used the term.

[80] Burns, *Jews,* 51-72, 134.
[81] ARM, ECR 343, 277r5.
[82] ACM, PRT-14540, 85r2-85v.

This suggests that the two Jewish men engaged with at least some choices inside the notary's office in a similar manner to Christian merchants.

Similarly, inter-religious contracts included an agreement not to deceive or commit fraud in the same manner and to a similar degree as intra-group agreements. There are 244 agreements (17% of the set) which included a form of agreement or promise not to commit fraud. Six of these involved an inter-religious relationship, making up 15.4% of the 39 inter-religious agreements. Three further agreements between Jewish parties also included the phrase. Following the hypothesis in chapter 1, that inter-religious relationships required the documents to do more trust work, it would be expected that a larger percentage of the documents involving non-Christians would include a promise not to deceive or commit fraud than those between Christians. The slightly lower percentage suggests that religious identity was not a factor that affected the choice to include the promise. The figure is less than both inter-gender documents (18% of all inter-gender contacts) and documents which included a family connection (29.6%).

The way in which non-Christian parties used promises, in contrast, suggests that inter-group relationships required a slightly greater level of trust work. Figure 5.2 showed that out of 1432 contracts, 753 involved an explicit promise of some kind. The largest number of promise phrases in one contract was seven, which occurred in only two contracts. Most contracts which used promises contained only one promise phrase (472, 33% of the set). However, almost half of the contracts did not include any promise (678, 47.3% of the set).

Figure 7.1 presents the same information for the 37 inter-religious agreements between male parties. Figure 7.2 presents the same information for the 12 contracts in which both sides of the agreement were Jewish and male. If inter-religious agreements required greater trust work from the documents, we would expect Figure 7.1 to present a greater number of promises, while Figure 7.2 would follow the pattern of Figure 5.2 more closely. Figure 7.1 shows that inter-religious agreements between male parties included promises

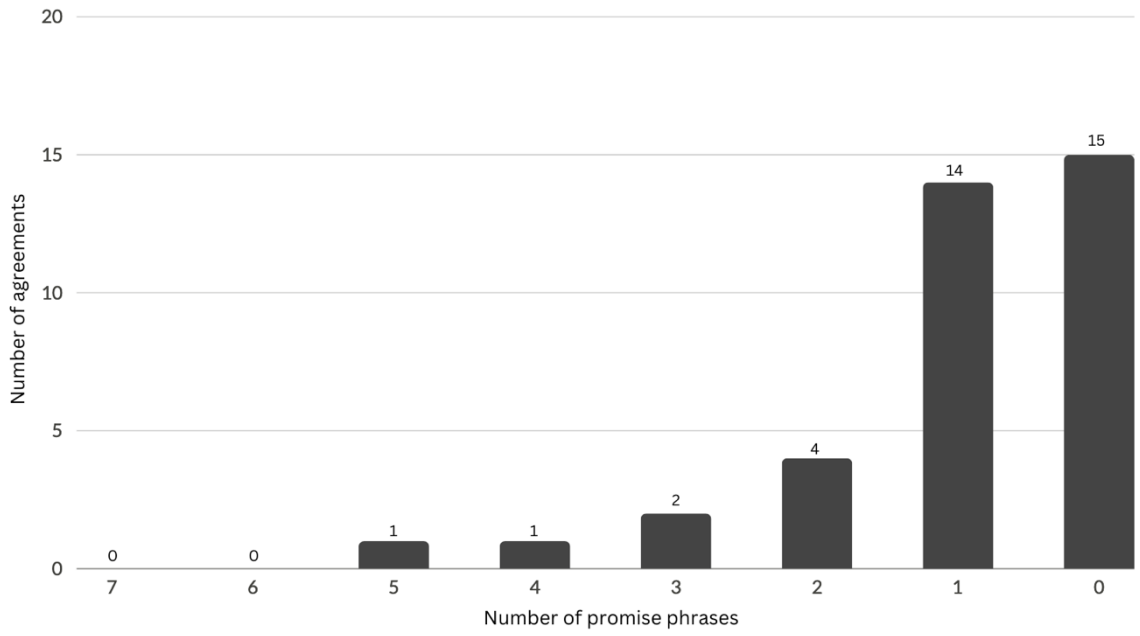


Figure 7.1: Number of promise phrases per inter-religious agreement.

phrases more often than they did not (22 out of 37, 59.5%). Figure 7.2 also shows that contracts between male Jews included promises as often as they did not (7 out of 12, 58.3%). Contracts between Christians (male or female) included promises only marginally more often than they did not (754 of 1432, 52.7%).

This suggests that parties of a different religious identity were required to stipulate explicitly that they would fulfil the contract with promises phrases slightly more often, which

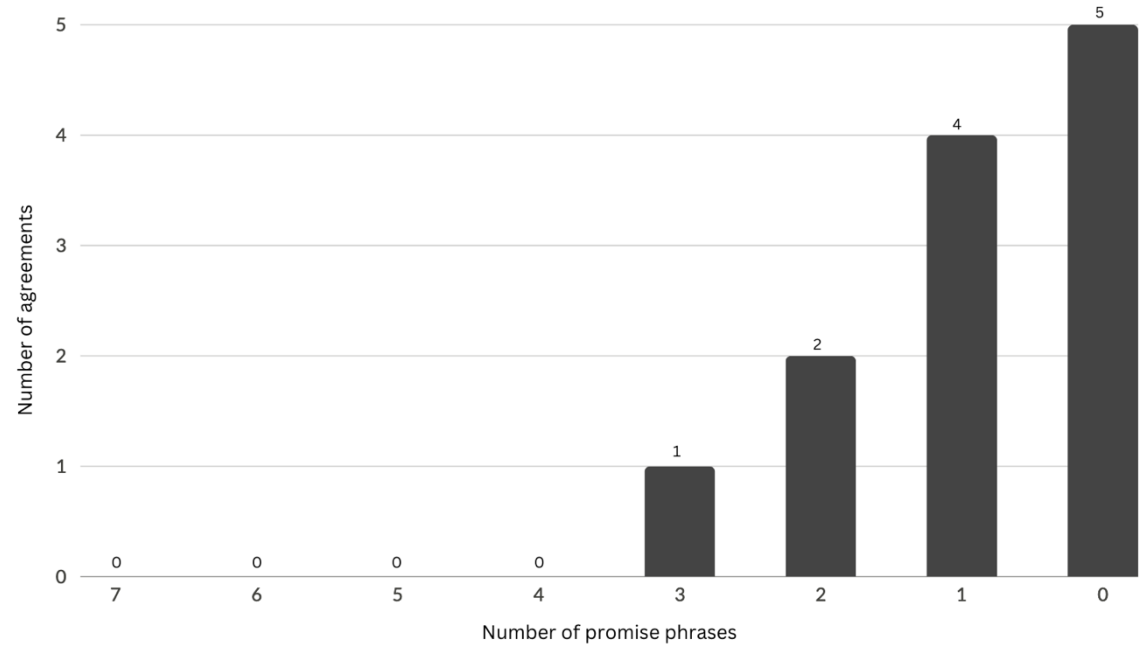


Figure 7.2: Number of promise phrases per agreement between Jewish parties.

may point towards a greater amount of trust work required from the documents when inter-religious negotiations were required. However, contracts between Jewish parties also show a preference for promise phrases. While seven agreements included promise phrases, and five did not, the varied number of promises phrases follows the pattern of the whole set (Figure 5.2) more generally.

There was a small minority of agreements (85, 5.9% of all contracts) which included an action promise by the travelling party to complete the contract. The contracts were already legally-binding agreements. Therefore, the explicit promise to carry out the agreement served to assure investing parties of the future intentions of the travelling party. Six of these agreements were inter-faith (7.1% of the 85 contracts using promises to complete the contract), more than we might expect given there were 39 inter-faith contracts in the set. The greater need for a Jewish or Muslim travelling party to stipulate explicitly that they will fulfil the contract (15.4% of 39 inter-faith contracts) may point towards a greater amount of trust-making required from the documents when inter-religious relationships were being negotiated. As noted previously, one contract with this phrase also included a guarantor, as the guarantor promised to carry out the agreement if required. This added yet another level of stability for the investing party, minimising the risk that they would be cheated or lose out from the agreement.[83] Furthermore, there is only one agreement involving Jewish parties which included a promise to tell the truth, while 44 agreements in the whole set included the phrase (only 3%).[84]

There are also examples of faith being given, or promises made on good faith (*fides*), between members of different religious communities. Jews and Muslims gave faith to each other and to Christian parties. There are four agreements in the set in which Jewish parties gave faith and one example of Muslim parties giving faith.[85] While the potential religious

[83] AHPB, Pere de Torre 6/1, 103r1.
[84] ARM, ECR 342, 210v1.
[85] ACM, PRT-14540, 123r3; AHPB, Pere de Torre 6/1, 103r1, 110v2-111v; ARM, ECR 342, 210v1; ACM, PRT-14545, 74v.

connotations of the term fides raises questions for the parties of inter-religious agreements, the central implication of calling upon an individual's reputation within the community (see section 5.4) presents one way in which fides could be used across religious lines as a form of trust work.

In his study of giving faith in twelfth-century England, Hyams finds no cases in which a Jew swore on his faith or gave faith. He gives this as evidence that there was a legal and social deficiency in the capacity for English Jews to 'pursue their business activities with their Gentile neighbours.'[86] If promising or creating an obligation on good faith did create an agreement with God as witness, inter-religious obligations might have benefited little from the addition of the phrase. However, while Forrest notes that one implication of faith was the idea that 'a firm faith in God was protection against doubt and heresy', he also points out that sometimes Jews and Muslims were considered to be 'the faithful' of an incorrect faith, but a faith nonetheless.[87] Indeed, though the three different religions conceived of God in different ways, there was some understanding that they all worshiped the same God, at least in Catalan intellectual circles; this was argued by Ramon Llull in *Book of the Gentile*.[88] As such, the use of obligations 'on faith' by Jews and Muslims in the documents shows that there was a shared concept of the ways in which one might seek trust from another party. Both used the invocation of a higher power and called upon the reputation of an individual within their community. This would fit with Roche's suggestion that, at least in English medieval trade, Jews were not considered to be outsiders but instead shared the use of the written word and common devices of trust which were part of the validation of a charter, or to extend this further, to the creation of a trusting relationship.[89] Contracts in Mallorca and Barcelona show

[86] Hyams, "Faith," 145.
[87] Forrest, *Trustworthy Men*, 26.
[88] Llull, Ramon, Anthony Bonner, and Eve Bonner, *Doctor Illuminatus: A Ramon Llull Reader,* (Princeton University Press, 1993), 50, 85-171; Annemarie C. Mayer, "Ramon Llull and the Indispensable Dialogue," *Quaderns de la Mediterrània* 14, (2010).
[89] Thomas Roche, "Making Agreements, with or without Jews, in Medieval England and Normandy," in *Christians and Jews*, eds. Rees Jones and Watson, 170.

that there was also a shared understanding of methods of trust-building, used by members of all three religious communities.

Contracts between Jewish parties used the phrase 'in good faith' in the same way as Christian parties. On 14 December 1335, three Jewish men, Haliffa Coreyef, Jucef Faquerni, and Mosse Faquerni created a partnership agreement in which they promised to each other, to faithfully uphold the partnership in good faith: 'nos omnes dicti socii et mitentes vestri mitentes adinvicem scilicet alteri super quibus promitimus adinvicem fideliter nos habere et bonam fidem portare adinvicem' ('we, all the said associates and your appointed representatives, mutually pledge to each other regarding those matters, promising to faithfully uphold and carry good faith towards each other').[90] Similarly, on 16 August 1314, Issachus Benhaembran Tahvelli of Mallorca received an investment from Samuel Faquim of Barcelona, both labelled as Jews. Benhaembran Tahvelli was to sail from Barcelona to Mallorca for mercantile purposes. The agreement was set up with the words 'convenio et bona fide promitto vobis' ('I agree and in good faith promise to you'), framing the entire agreement in an appeal from Benhaembran Tahvelli for Samueli Faquim to place trust in him.[91] Finally, on 6 December 1318 Homer, the son of Davidus Ben Non, received an investment from Homer Ben Jucef Ben Amar, both labelled as Jews. Homer Ben Non agreed at the end of the contract to carry the investment in whatever boat he could. The sentence ends with an abbreviated phrase which can be identified as a shortening of 'in good faith': 'in quocumque vassello potero bono etc.' ('in whichever boat I can, in good etc.').[92] The first two agreements employed the phrase 'in good faith' to express the positive intentions of the parties in the creation of the bonds being built by the notary. The shared religious identity of the parties may have elevated the strength of the phrase, as they shared a higher power on which to call upon. Nevertheless, Ben Non and Ben Jucef Ben Amar used the phrase 'in good faith' to refer to honest mercantile

[90] ACM, PRT-14545, 74v.
[91] AHPB, Pere de Torre 6/1, 110v2-111v.
[92] ACM, PRT-14540, 123r3.

intentions as a bolster to a relationship-building obligation which was uncertain and based on ability (see section 6.4 on uncertain obligations).

Contracts between Christian and Jewish parties also suggest that the giving of faith was not affected by the religion of the parties. An agreement written by Pere de Torre on 7 August 1314 between Borracius Mancofa, Stephanus Bordelli, and David de Apraria, a Jewish merchant included an agreement in good faith. Mancofa and Bordelli received Apraria's goods and agreed to transport his mother, family, and other persons to Cyprus. Apraria responded to Mancofa and Bordelli by promising that he would fulfil his side of the agreement, without any faith language.[93] The verbs in the contract then became plural, and Mancofa and Bordelli responded with their own agreement to complete the contract, this time in good faith: 'super omnibus aliis predictis et singulis complebimus et accendimus vobis bona fide et sum aliquo dolo et fraude' ('we will fulfil and undertake for you in good faith, without any deceit or fraud'). The Christian shipowners made their agreement in good faith, while the Jewish investing partner made an agreement without faith or an oath. The contract is of interest for many reasons. Firstly, Mancofa and Bordelli were to transport Apraria along with his servants, two Astraugams[?],[94] one boy, and one slave girl ('unum servitorem vestram et duam Astraugam m_re vestram et unum puerum et unam ancillam') as well as his mother. Mancofa and Bordelli promised to give Apraria and his mother 'sufficient place in the middle of the said boat' ('promittimus […] dabus vobis et dicte domine Matri vicem et similiter vestre placenti suficiente in medio dicte coche') and to accommodate all his companions ('levabimus omnes companeas vestras').[95] The text stated that the party would either return to Barcelona on the same boat or would go on to Narbonne instead; Apiaria had until the coming December to inform Mancofa and Bordelli if he intended for his party and goods to return to Barcelona: 'quod in medio [___] december proxime venientis tenaneatur vobis dicere si poterimus vos et

[93] AHPB, Pere de Torre 6/1, 103r1.
[94] I am yet to find a translation for this term.
[95] AHPB, Pere de Torre 6/1, 103r1.

res vestras levare causa redeundi ad has partes vel non' ('that in the middle of [___] December next upcoming, it is incumbent upon you to inform us if we can carry you and your belongings for the purpose of returning to these parts or not').[96] This shows that the parties expected to remain in contact beyond the voyage and may have continued to conduct business together. Apiaria did not appear in any other documents in the set. Many other parties in the set were labelled as from Apiaria,[97] one of which was identified as Jewish: Mosse de Apiaria acted as a witness.[98] Mancofa and Bordelli, however, appeared in another two agreements in September 1314 as shipowners rather than parties to the agreement.[99]

Mancofa and Bordelli also ended another contract with the same agreement in good faith. On 14 June 1314, Mancofa and Bordelli agreed to ship the goods of Petrus Terrache, Mancho de Canali, Guillemus Pebrery, and Salvator Falicii, all citizens of Barcelona, to Caller[?] and Sicily, and stated that they would complete and perform in good faith and without deceit or fraud: 'omnia supradicta et singula promitimus nos dicti Borratius Mancofa et Stephanus Bordelli accedere et complere vobis dictis mercibus et rebus et bona fide et sine aliquo dolo fraude' ('this we promise, for all of the above and individually, Borratius Mancofa and Stephanus Bordelli, to perform and fulfil for you, the said goods and things, in good faith and without any deceit or fraud').[100] A statement from Terrache, Canali, Pebrery, and Falicii also created an obligation for them to fulfil their side of the bargain. The folios of the agreement have suffered from damage making a full and accurate transcription difficult, though it appears that they did not make their obligation on good faith. Therefore, the Christian investing partners were not treated any differently from the Jewish investing partner (Apiaria) in a very similar contract, by the same notary and with the same travelling partners. Similarly, there appeared to be little issue for a Christian travelling party to make a promise in good faith to an investing

[96] Ibid.
[97] Almost certainly modern-day Piera, Catalonia.
[98] AHPB, Pere de Torre 6/2, 102r1.
[99] AHPB, Pere de Torre 6/1, 43v2, 115v2.
[100] Ibid., 67v2-69r.

party of a different religion. No additional clauses or promises were included in comparison to the agreement between the same boat owners and Christian investing parties.

Only one out of 90 instances of promises to be faithful was made by Jewish men. Given that agreements involving Jewish parties made up 2.6% of the whole set, the singular example is not a great surprise, though we might have expected a couple. This was the only example in the set of Jewish parties using a term related to faith with a Christian party. Written by Pere de Torre on 2 June 1316, Bonjuha Bonavia and Issach Bonavia, sons of Abram Bonavia and Jews of Barcelona, received an investment of £30 from Jacobus de Forebus, a merchant of Barcelona, to be traded in Narbonne and the whole of Provence. The Bonavias promised Forebus to be faithful: 'Promittentes esse fideles etc' ('we promise to be faithful etc.').[101] The use of the term by Jewish travelling merchants to a Christian investing party suggests that in these agreements the term was being used with limited religious connotations; faithfulness in the contracts signified and sought the confirmation of loyalty and trustworthiness, calling on the reputation of the parties within their communities, rather than faith in relation to God. For the term to function as a part of a relationship-building phrase, the meaning would need to be shared in some way. This was about faithfulness in business, trustworthiness as merchants, and the building of a relationship to deal with risk.

There is also a singular example of Muslim parties making a promise in good faith to Christian parties. We return to the agreement written on 19 February 1243 in which Abdella Alfenechi and Alfarag de Saragossa, identified as Muslims, invested in a trading voyage to Béjaïa alongside Dominicus de Calidis.[102] This agreement contained no promise phrases, no reference to faithfulness or lawfulness, and no concern with truthfulness. In their second agreement on 15 June 1243, planning a voyage to Tunis, Alfenechi and Alfarag formed a partnership with Bertrandus de Teviza de Dertusa, a relative of Dominicus de Calidis, in which

[101] AHPB, Pere de Torre 6/2, 102r1.
[102] ARM, ECR 342, 160r4.

Alfenechi and Saragossa made an agreement to act legally and in good faith as well as to speak the truth: 'Nos dicti Abdella et Farag facimus nos legaliter gerere et bonam fidem et legalem inde tibi portare et in omnibus verum dicere sic quod non decipiamus alter alterum' ('We, the said Abdella and Farag, commit ourselves to act legally, in good faith and legality towards you, and in all things speak the truth, so that we do not deceive one another').[103] Like the previous Jewish parties and other Christian parties, Muslim parties may have been referring to faithfulness to their community, defined by shared practices and language, using their reputation for reliability within the community as a sign of their moral standing. The connections between good faith, lawful behaviour, and honesty highlight the reputational meanings of *fides*/faithfulness; the terms call upon one's reputation, loyalty and trustworthiness to a community.

In the agreement between Alfenechi, Saragossa, and Calidis, and the previous between the Bonavias and Forebus, we can see a shared language of faith, in which honesty and loyalty were central to the building of trust. The majority of agreements did not include any reference to faith, showing that practices of trust did not rely on words of religious faith. Choices were made by the parties, and mediated by the notary, to employ the language of faith, lawfulness, and honesty in the making of promises and obligations.

Overall, agreements between members of different religious communities tended to include more promise phrases suggesting that inter-group relationships required a greater level of trust work. However, these agreements took part in the same trust work language as the rest of the set, engaging in disposition promises related to faithful and lawful behaviour.

[103] Ibid., 210v1.

7.5: Oaths and plain words

Oaths were a character-management technique which provided an additional level of punishment should the travelling party fail in their obligations, offering religious punishment, excommunication, and possibly community punishment in terms of reputational damage. This assured the investing party that the travelling party had more motivation to fulfil their obligations. While Hyams finds that Jewish oaths were used as a tool to enable Christians to accept the word of a Jew in twelfth-century England and therefore common as a form of trust-making practice, Roche finds 'no suspicion towards Jews' in credit contracts in England and Normandy in the twelfth century. This meant that Jews were not considered outsiders but were a part of the in-group using the written word and its trust as a source of validity.[104] The evidence in the set, however, suggests that Jews were excluded from the trust work done by oaths, in cases of contracts between Jews and Christians.

There are two examples in the set of oaths being used in agreements which involved Jewish parties. The first agreement included a Christian making an oath to a Jew. On 11 March 1239, P. Traynach received 10s. from J. Judeus to be repaid in Marseille. Traynach ended the agreement by swearing as part of a promise to repay the debt: 'Promito similiter solvere illuch quamcicius illuch summo et hoc juro' ('I promise to repay it as soon as I have it, and to this I swear').[105] As the only example of a Jew receiving an oath from a Christian, it is hard to draw conclusions. That Traynach was swearing to a Jew in some ways did not affect the oath. If he broke the agreement, he would still have received religious punishment in the form of excommunication, and could have faced damaged to his reputation in the community. Nevertheless, placing his intention to carry out the contract in the context of his faith to his religious community, in a contract with a Jewish investing party, may have been less

[104] Hyams, "Faith'," 140; Roche, "Agreements," 169-170.
[105] ARM, ECR 342, 4r1.

significant than if the investor was Christian, or of the same religion and therefore part of the community being called upon as witness and guarantor of his intentions.

The only other example included the swearing of oaths between Jewish parties. In the partnership between Haliffa Coreyef, Jucef Faquerni, and Mosse Faquerni written by Bernat de Olives on 12 December 1335, the three men solemnly pledged ('Juramus sollempniter') by the ten commandments of the law of Moses ('decem praecepta legis Moysi') that they would not act against the agreement by reason of minority or any other reason ('contra predicta non venire racione minoris etatis nec aliter racione'). The three men then signed the document.[106] This is the only oath which referenced the commandments of Moses, showing that the Jewish parties were swearing on the Old Testament, as opposed to the other oaths which recorded Christians swearing on the New Testament (or the Four Gospels). This demonstrates the influence of the customary laws of the Crown of Aragon on the contract. The compilation of laws, *Fueros de Aragón*, commissioned by Jaume I in 1247 and expanded from 1300 onwards, set out how oaths were to be made by Christians, Muslims, and Jews in the settling of disputes (not contract creation), which varied according to the sums of money involved.[107] The *Fueros* stated that Christians involved in a dispute worth 6d. or less were to swear on the life of one Christian. If the dispute was 7d. or more, then the oath was to be on the swearer's own life. If more than 12d., the oath was to be made on the Gospels and the cross. For Jews, the *Fueros* presented two categories: if 12d. or less they were to swear on the 'law of Moses' (*ley de Moysén*).[108] Though these were rules for oath-making in a different setting (dispute resolution) they demonstrate an expectation and acceptance of the practice of Christians and Jews swearing oaths on different texts.

The notary appears to have been about to write the Christian oath phrase as the words 'quattuor evangelia contra predicta non' were crossed out (Figure 7.3). This may simply show

[106] ACM, PRT-14545, 74v.
[107] Vicens, "Swearing," 124-125.
[108] Ibid., 124-125.

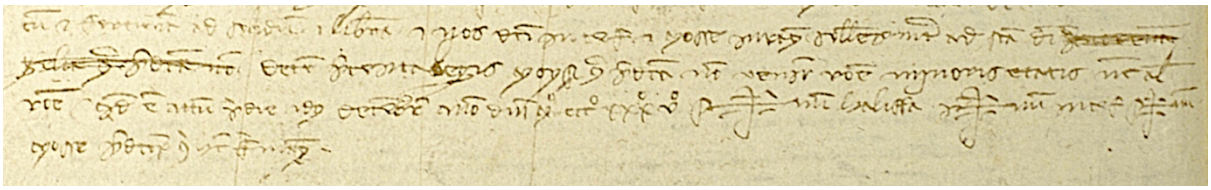


Figure 7.3: detail of ACM, PRT-14545, 74v, showing 'quattuor evangelia contra predicta non' crossed out.

that notaries frequently rote copied well-known phrases. However, as has been made clear throughout this analysis, the notaries were rarely copying the same phrases repeatedly, instead having to engage with choices made by the parties. Therefore, instead, the mistake may demonstrate the infrequency with which Jewish parties made oaths in notarial documents. This conclusion is backed up by the statistics of the set: out of 1440 documents, and 42 involving Jewish parties, only one included an oath made by a Jew. It is also worth noting that though we know that there were standard practices for Muslims swearing oaths in the Crown of Aragon for the settling of disputes, there are no examples of Muslim oaths in the set of documents.[109]

Despite a clear precedent in customary law for the making and receiving of oaths from Jewish men, the lack of Jewish oaths in the set could suggest that Jewish parties were not treated with greater suspicion than Christian parties. The inclusion of an oath would have been an easy way to heighten the pressure on Jewish parties to uphold their side of a contract, presenting the group as less trustworthy through the need for added levels of assurance to the opposing Christian party. However, the opposite could also be true. Oaths were an effective way of intra-religious trust building, calling up the religious community as witness and guarantor of the reputation of a party. The lack of oaths between Jews and Christians, appearing in one contract in which the Christian party swore the oath, might demonstrate that Jews were considered unable to partake in this form of trust making. Taken further, it might suggest that there was less scope for Jews to establish trust more generally, though the

[109] Ibid., 117-151.

evidence presented in this chapter overall suggests otherwise. Additionally, the swearing of an oath from a Jew to Christian potentially carried negative connotations; the 1241 constitution promulgated by Jaume I in Girona, which was exclusively focused on Jewish loans, stated that Jewish moneylenders were required to swear an oath every year in the presence of a *veguer* or magistrate that they would observe the interest rates set by the king. Notaries had to maintain a list of Jews who had sworn the oath and were unable to authorise loans from any Jew who had not.[110] Christian moneylenders did not need to swear an equivalent oath. Oaths by Jews to Christians were already part of a practice of distrust and power inequalities between the Jewish moneylending community and the Christian notarial and royal institutions. Taken further, the 1241 constitution and *Fueros de Aragón* created a precedent that an oath from a Jew to a Christian institution was trust work managing a form of mistrust of the Jewish community. However, individual Christians did not follow this precedent; they did not require individual Jewish investors to swear an oath to them. Despite the existing framework to manage distrust of Jews, the individual contracts show that Jews were not treated with suspicion in individual investment relationships.

From another perspective, the inclusion of an oath in a partnership document between Jewish parties is unsurprising. Partnership contracts included more oaths than other types of contract; there are 27 instances of oaths in partnership contracts in the set. 18 of these were not about the issue of minority. Out of 66 partnership agreements in the set, this presents a large proportion (27.3%) in which an oath unrelated to minority was sworn. When compared to the proportion of agreements which involve the verb 'jurare/iurare' in some form in the whole set, 8.5%, we can see that partnership agreements made much more use of oaths than *comanda* contracts. The partnership agreements which included an oath and were written in Mallorca tended to include the oath in a brief form, such as 'et juramus etc.'[111] or 'et hoc

[110] Jaume Riera i Sans, "The Regulations of James I concerning the Jewish Moneylenders: A Preliminary report," *Imago Temporis, Medium Aevum* 4 (2010): 275-276.
[111] ARM, ECR 343, 205r1.

iurat dictus Antonius.'[112] As previously noted, the inclusion of additional trust talk phrases in a partnership agreement, including between three Jewish men, is not greatly surprising given that these agreements frequently lasted a longer period of time than single investments and might have involved greater sums of money.

Phrases which stated that the fulfilment of the contract would rely on plain words, without oaths, were also sometimes included in agreements involving Jewish parties. One was between two Jewish parties, while the other was an interfaith relationship between a Jew and a Christian. Both were contracts establishing partnerships, as opposed to agreements between Christian parties which used this phrase, which were all *comanda* agreements.

On 29 September 1299, Pere Portell drew up a partnership contract in Barcelona between Salomon Jacob and Vitali Moarel, both Jews of Barcelona. The men were planning a trading voyage to Candia and Cyprus. The contract specified the distribution of profits from various transactions during the journey; profits would be divided into eight parts, with Moarel receiving five parts and Jacob receiving the remaining two and a half parts (the numbers do not add up in the document). The contract granted Moarel full control over profits from other transactions made by both parties during the journey. Jacob additionally stated that he would believe Moarel on his plain and simple word, without litigation, an oath, witnesses or any other form of proof ('credatur […], plano et simplici verbo vestro, absque placito, sacramento et testibus et absque aliquo alio genere probacionum').[113] This formulation followed the phrase used between Christian parties, shown in section 5.4, suggesting that the two Jewish men were part of a shared language of trust work.

A second contract, written by Guillem Pera Tarasconi in Mallorca on 27 September 1348, created a partnership between Maymonus ben Faraig, a Jew of Mallorca, and

[112] ACM, PRT-14540, 96v-97r. Also ARM, ECR 342, 126r1, 232r2; ACM, PRT-14540, 113v-114r, 114r1-114v.
[113] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 70.

Franciscus Maymona, a merchant and citizen of Mallorca, for trade on the Barbary coast. In this contract, a phrase related to 'plain words' was combined with an agreement to fulfil the partnership under the obligation of a monetary penalty (seen in section 7.3). They promised each other to fulfil the obligations and not contravene them under penalty of all losses, damages, and interests ('non contravenire aliqua ratione sub pena omnium missionum dampnorum et interesse') and to deliver the required obligations, 'simply by word, without witnesses and swearing' ('simpliciter verbo absque testibus et iurem').[114] Ben Faraig and Maymona appear to have based their relationship on an established level of trust, much like the Jewish traders Jacob and Moarel, despite the relationship between members of different religious communities. They did not require some character management techniques which assured the investing party that the travelling party had more motivation to fulfil their obligations, such as the swearing of an oath. However, they instead relied on the potential penalty of £100. There was a high level of confidence in the honesty between the men, but heightened concern about the ability to complete the contract.

No partnership agreement between Christian parties included this phrase. Ben Faraig and Maymona, and Jacob and Moarel, therefore present particular partnership relationships, in which the men were prepared to place a large amount of confidence in each other and in their honesty and intentions. Both pairs made their partnerships only for the duration of one voyage and the sale of its related goods and none of these four men reappeared in other contracts. These were short-term partnerships, with a great deal of shared confidence, mainly concerned with recording the agreed upon split of profit. The contracts created relationships which performatively stated that specific character-management techniques were not required.

[114] ACM, PRT-14569, 34v-35r.

7.6: Risk and God's will

Financial liability was apportioned with the term *redegum* in inter-religious agreements following the patterns demonstrated in section 6.2; the travelling party tended to take on the risk in *comanda* investments, while it was shared in partnership contracts. For example in an agreement written by Guillem Pera Tarasconi in 1348, Salamoni Xulella and Moxino Boarug, Jews of Mallorca, invested in a voyage undertaken by Planus (surname lost) with his ship. As was most common, the two investing men took on the risk: 'ad vestrum redegum, periculum et fortunam' ('at your risk, danger, and fortune').[115]

Inter-religious contracts between Jews and Christians also referred to the control God possessed over the future, despite the different religious communities to which they belonged. These phrases, which provided the travelling party of an agreement with a form of dispensation, used the power of God to control the future as a way to deal with the uncertainty. The investment of Xulella and Boarug in the voyage undertaken by Planus was to be converted into provisions and salaries for the mariners and other expenses of the vessel and the journey which was to be undertaken, 'God willing' ('Deo volente'), from Ballorca to Ténès (Algeria) and back. [116] The partnership formed between Abdella Alfenechi, Alfarag de Saragossa and Bertrandus de Teviza on 15 June 1243 also referred to God's control of the future, stating that the profit would be God given: 'levato prius vincumque suo capitali de omnis lucro que deus tibi dederit in dicti viatico' ('first deducting your capital from all the profit that God will give you in the said journey').[117] Though members of different religious communities with different and separate practices for worshipping God, the parties to these agreements present a shared understanding that the future of the venture was not entirely under their control.

[115] ACM, PRT-14569, 3r.
[116] Ibid.
[117] ARM, ECR 342, 210v1.

The future as controlled by God could be the only form of explicit trust work in the document related to risk and uncertainty, even in inter-religious agreements. On 8 August 1259, Juceff Abennono invested 'good red Muslim cloth' ('bonum virmilium de panno sarracenico') in J. de Episcopo's trading venture to Tunis. The voyage was recorded as taking place 'domino concedente' ('with God granting'). This was a very short agreement with little else to act as a contingency, except the standard pledge of all possessions ('obligo bona mea'), and no division of financial risk.[118] There was one action promise: Episcopo promised to immediately return the profit in Mallorca, on his return, without any delay ('promito ipsum tibi dare in continenti cum rederio de dicto viatico […] in maiorice sine omni etc.'). The travelling party, Episcopo, was presumably a Christian while the receiving party, Abennono, can be cautiously identified as a Jew as many similar names were labelled as Jewish by various notaries. The travelling partner, Episcopo, was provided with a relatively simple way to not give Abennono the profit, as he could escape blame for the any problems with the voyage caused by unknown elements controlled by God. He pledged his goods, but on the contingency that the voyage's success may not be granted by God.

The parties must have assented to the wording of the agreement in front of the notary; as noted in chapter 2, it was required for the agreements to be read back to the parties and wording was often changed. As a result of the position of the notary, a Christian royal or municipal official, Jewish parties may have had less agency than their Christian counterparts to change wording and affect the phrasing of the agreement. The agreement between Episcopo and Abennono, however, did include changes to the text, suggesting that some negotiation of wording took place; *deportare* is added above the main line with an arrow (Figure 7.4). As a member of a different religious community with separate practices of worship, Abennono had a different relationship to God than the other men involved in the agreement. He may have understood references to God in the context of his own community,

[118] ARM, ECR 345, 26r2.

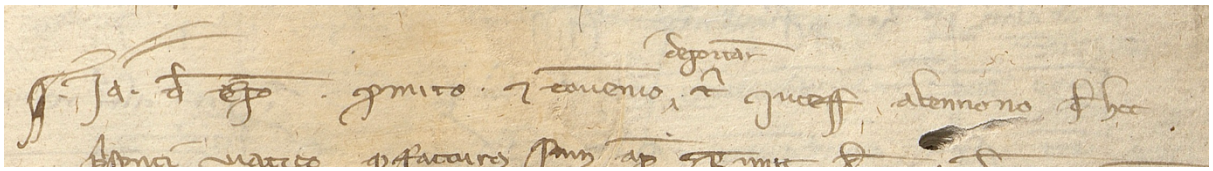


Figure 7.4: Detail of ARM, ECR 345, 26r2, showing the addition of the word 'deportare'.

though this too presents complications for the relationship and framing of obligations within the agreement. Rather than showing increased trust in the travelling party, the inclusion may instead demonstrate the decreased agency of a Jewish party in a Christian notarial office.

God and God's control of the future was also referred to in agreements between Jewish parties. On 12 December 1335, Haliffa Coreyef, Jucef Faquerni, Mosse Faquerni, went to the notary Bernat de Olives to create their partnership agreement. This partnership included investments from Bonjuha Dellellos and Hayono filio Issach. The agreement Olives created for them ended by stating that the common account of the partnership was according to the will of God and at their risk and fortune ('ad voluntatem dei et ad nostrum risicum et fortunam ad secundum').[119] As noted in the section 7.5, Jucef and Mosse also swore a solemn oath by the holy name of God ('Jucef et Mosse Juramus sollempniter ad sancta dei'). As a result, these men were in a complex situation, as five Jewish men employing a Christian notary to write their agreement. Section 6.2 demonstrated that inclusion of the phrase 'ad voluntatem dei' was the outcome of collaboration between the parties and the notary, as parties chose to include phrases which referred to God's control of the future, thereby recognising and engaging with the uncertainty of trading ventures. The three Jewish men, Coreyef, Faquerni, and Faquerni dealt with uncertainty in the same way, recognising God's control of the future and their inability to control the venture

Coreyef, Faquerni, Faquerni all stood before Bernat de Olives and his scribes in his office in Mallorca to create their partnership agreement. While the Jewish community of Mallorca continued to operate in various commercial activities, by 1290 their residences were

[119] ACM, PRT-14545, 74v.

confined to the south-eastern part of the old city and privileges were removed and regranted in waves following reactions to events in the Crown of Aragon across the period.[120] As a result, these three Jewish men may have had limited agency and faced coercion when working with the royally appointed notary. This agreement was only between Jewish parties who, with a Christian notary and four Christian witnesses, nevertheless chose to include a reference to the outcome of the investment being subject to God's will. There was a sense of heightened trust, as they did not hold each other as firmly to account as they could, by specifying payment in more detailed ways and without caveats related to risk. Their partnership contract demonstrates a shared engagement with uncertainty-management mechanisms as a part of trust work; both Jews and Christians agreed on the significance of making promises to each other within an understanding that the future was uncertain and controlled by God.

[120] Assis, *Golden Age*, 54.

7.7: Discretion and constraint

Section 6.3 demonstrated that the granting of discretion or the imposition of constraint were key ways in which parties managed uncertainty. Investing parties used a balance of discretion and constraint to both assure that they would receive their investment in a manner which suited their needs and to provide travelling parties with sufficient future flexibility to enable them to deal with the unknown future of the venture. They also invited investing parties to place belief in their abilities and competence.

228 agreements (15.8% of the set) used a form of the verb 'velle' in order to allow one or both of the parties to decide details at a later point of time. The term appeared in roughly 297 phrases. Six inter-religious contracts included phrases which granted discretion. Two contracts between Jewish parties used discretion. This means that 15.4% of the inter-religious agreements granted a form of discretion, very slightly lower than the overall percentage in the set. 15.4% of intra-Jewish contracts granted discretion. The figures therefore suggest that inter-religious and intra-Jewish contracts used discretion to more or less the same extent than in intra-Christian agreements.

There were only two inter-religious agreements (4.8% of the inter-religious agreements) which granted discretion in relation to the repayment of the investment, compared to 97 contracts (7%) in the set. As there are only two, it is difficult to generalise from them. Both these contracts stated that repayment was to be made as the investor wanted, as was common in Christian-only contracts. As such, the inter-religious status does not appear to have been a significant factor in the inclusion of this specification.

One contract was a *comanda* investment from a Christian to a Muslim party. On 1 January 1247, Aemer Abenxequer, a Muslim from Alicante, received an investment of 3s. 4d. from B. de Quarte de Sancto Felice. Travelling alongside the investor, Abenxequer was to use the investment in Alicante and promised to repay Quarte or whomever he wanted: 'promi[to] tui et tuis cui volueris persol[uero] in Alacant Statim sum ibidem applicueris' ('I promise to pay

this to you or to whomever you desire, in Alacant, as soon as you arrive there').[121] This payment was to be made without any delay and include payments for any damages incurred. In this agreement, the Muslim travelling party was required to repay at the discretion of the Christian investing party.

The other agreement stated that repayment was made according to the will of the Jewish investing party. On 24 April 1314, Arnaldus de Corniliano, a shipmaster, received an investment from Aharous Isdrahell, labelled as a Jew, worth 27 bezants and two *quitatos*[122] of Alexandrian gold. Corniliano promised to pay the investor, Isdrahell, or whomever Isdrahell wanted ('soluam vobis vel cui sine quibus vos volueritis') in the locations to which the ship travelled.[123] The obligation to pay Isdrahell or whomever he wished was then repeated, in the next sentence, along with an acknowledgement that there should be no delay in repayment: 'predicta solucionem debiti supradicti faciam vobis vel [cui] siue quibus vos volueritis ut dictum est Sine omni dilacione etc.' ('the aforesaid payment of the above-mentioned debt I will make to you or to whomever you choose, as stated, without any delay etc.'). The two contracts therefore present a Jewish investor and Muslim travelling party being treated in similar ways to Christian parties. The investing party was still the one receiving discretion and while the travelling party had constraints imposed on their actions.

The use of *voluntate* in phrases dictating repayment were, in contrast, much less common in agreements involving Jewish or Muslim parties. There is one inter-religious contract with a Jewish man as part of the main contracting parties which included a *voluntas* phrase. The 'will' referred to was that of Christian parties, however. This suggests that generally Jewish investing parties working with Christians were not afforded the same power, to specify the time and manner of their repayment in the future as suited them. On 18 August 1316, Samuel Bonafos and Astrugus Arnzellay, Jews of Barcelona, received 120s. from B. de

[121] ARM, ECR 343, 245r4.
[122] I cannot identify a translation for this word.
[123] AHPB, Pere de Torre 6/1, 12r2.

Vallibus which was to be repaid according to the latter's will.[124] The lack of reference to the will of a Jewish party suggests that Jews possessed a decreased level of agency in the agreements in comparison to their Christian counterparts.

Indeed, the only agreement to refer to the will of a Jewish party was a partnership contract between two Jewish men, in which one was able to use his money and goods as he wanted as a part of the partnership. On 29 September 1299, Salomon Jacob created a contract which confirmed the relationship between himself and his partner Vitali Moarel. Jacob stated that Moarel could use his capital and the profit he made as he wanted, according to his will: 'Habeatis etiam, ad vestram voluntatem faciendam, totum lucrum quod factum fuerit' ('you may also have, according to your will, all the profit that has been made').[125]

One agreement even erased the will of a non-Christian. On 1 December 1349, Francesch Balle recorded a *comanda* investment for Bartholomeus and Johannes de Basers. The brothers accepted delivery of 294 jars of oil from Arnaldus de Termes for sale in Almería.[126] Following the use of 'will' in past payment, the Basers brothers stated that they were 'well settled and contented' by Termes 'according to their will, for the whole of the cargo' ('nos esse bene paccates et contentes a vobis voluntati nostre de toto illo naulo'). An unusual fourth person was involved in the agreement, however. Cassim Azam, a Muslim from Almería, was also involved in hiring the brothers to carry the goods, though he was not included as a full party to the agreement. The contact stated that the Basers brothers acknowledged receipt of oil from Termes which they were to carry for Termes and another man:

> 'portare debemus pro vobis et Cassim axamque sarracenum de almaria cum dicta coquam in hoc praesenti viatico quod nunc deo dantur facturi sumus recendendo de maiorice et eundo ad dictum locum almarie'.
> ['we must carry for you and Cassom Azam, a Muslim of Almería, with the said boat in this present voyage we are now making, God giving, and going and returning to Mallorca to the said location of Almería'].

[124] AHPB, Pere de Torre 6/2, 178v3.
[125] Madurell i Marimon and Garcia i Sanz, *Comandas Comerciales*, doc. 70.
[126] ACM, PRT-14566, 13v1.

Rather than being listed as an investor, Azam was treated separately, as a silent party with no agency in the contract. It may have been that Azam was simply not present at the time the agreement was written. However, this was the case for other parties and their absence was noted in the agreements while they still acted as main parties.[127] The use of *voluntas* was disconnected from Azam, only being used in relation to the payments made by Termes. Azam's agency as a form of investor was completely different from that of Termes, implying that there was an asymmetric power dynamic, with religious identity as the key difference between the two men.

Similarly, while 368 agreements (25.7% of the set) included a phrase giving discretion to the merchant to trade in any location, only one of these involved an inter-religious relationship (2.6% of inter-religious contracts). This is a significantly smaller number than would be proportional suggesting that inter-religious relationships may have faced stricter requirements for establishing trust and confidence. When Acmet Abenyequir, a Muslim from Alicante, loaned his ship to Bernardus de Quarto on 29 December 1247, the voyage was to be from Alicante to Algiers or Bougie, 'to any place we wish to send [it]' and then back to Alicante, God willing ('sicut mihi hostendit, videlicet de Alacant usque a Alger vel Bugiam, in quocumque loco missis voluerimus et de eiusdem locis usque in Alacant Domino concedente').[128] The use of the first person plural for 'voluerimus' suggests that both parties would be part of making the decision. This provides a sense of the ongoing planning of the voyage; the reader enters into the middle of the planning stage, where the end location has not yet been decided by the parties. Abenyequir promised to pay half of the cost of hire in Tunis, and the other half in Alicante, as well as half of the customs and expenses that the ship would incur as a part of the venture. It was noted in section 7.3 that Abenyequir's payment schedule was laid out in more detail than was normal; the agreement relied to a greater extent than normal on risk-

[127] E.g. ARM, ECR 344, 168v; AHPB, Pere de Torre 6/1, 103v3-104r.
[128] Alvaro Santamaría, *Ejecutoria del reino de Mallorca* (Ayuntament de Palma, 1990), doc. 51; ARM, ECR 343, 243v2-244r.

management techniques related to repayment, showing a heightened concern in relation to payment. Despite the uncertain location of the voyage, a decision which appeared to be shared by both the travelling merchant and shipmaster, the payment specifications were not flexible. The agreement had an appearance of flexibility, though the Muslim shipowner was held to tighter constraints than in similar Christian-only contracts.

In addition, no inter-religious agreements allowed discretion to decide which ship was to be used. Three agreements between Jewish parties included this granting of discretion, however. In a *comanda* investment notarised by Pere de Torre on 17 August 1316, Issacus Bonavia received an investment from Bonjuha Bonavia for travel to Azgars (possible Algiers), using whatever vessel went there for the purposes of trading: 'in quocumque vassello Illuch Ivero causa mercandi' ('in whatever vessel goes there for trading purposes'). He was also able to return on whatever vessel was heading to, presumably, Barcelona: 'apportare in quocumque vassello venienti ad ipsas partes [Barcelona]' ('carrying in whichever vessel [is] coming to these parts to [Barcelon]').[129] Similarly, Issachus Benhaembran Tahvelli received an investment from Samueli Faquim and Abrahe Bisbe, for a voyage to Mallorca from Barcelona, in whichever vessel travelled there for trading purposes and would return in any ship which travelled back to Barcelona.[130] Benhaembran Tahvelli had previously received an investment from Samueli Faquim on 16 August 1314, which was to be taken to Mallorca in any boat travelling there for trading purposes.[131] Though discretion was granted such that an investment could be used in an unspecified venture in agreements between Jews, similar phrases do not appear in inter-religious contracts. This suggests that there tended to be different trust work in inter-religious agreements; there was a level of trust which was lower in the contracts between parties of different religions shown by lower levels of discretion, unlike intra-Jewish which mirrored intra-Christian contracts.

[129] AHPB, Pere de Torre 6/2, 178r1.
[130] AHPB, Pere de Torre 6/1, 105v2.
[131] Garcia i Sanz and Madurell i Marimon, *Societats Mercantils,* doc. 21.

Nevertheless, some inter-religious relationships did grant discretion in the same way as agreements between Christians, suggesting that the granting of discretion was more related to the interpersonal relationship than the religious identity of the individual. For example, references to future communication between parties in order to express decisions made at a later time feature in an agreement written by Pere de Torre between the travelling party Issachus Montus, a Jew of Villa de Cilforge near Tarragona, and an investing party of P. de Rocha, R. Cuniyl and B. Castilionis. The travelling party promised to use the £20 investment to buy goods which the investors indicated to them and 'have said or will indicate and say later' ('mercos quos mihi significastis et dixistis seu decetero significabitis et decetis ser merces').[132] At a later point, the investing party was to indicate what goods should be returned.

Similarly, like contracts between Christian parties, inter-religious agreements occasionally allowed discretion for investors to decide on what goods would be loaded at a later point, as well as from whom. Three out of the 31 contracts in the set which included a phrase allowing one party to decide which goods they would load onto the ship were inter-religious agreements. Compared to the contracts in the whole set with this phrase this is a large percentage; 7.7% of all inter-religious agreements included this phrase while only 2.2% of all contracts included this phrase. An inter-religious agreement was therefore more likely to allow the 'investing' party to decide what goods would be loaded at a later point as well as/or from whom.

All three examples were in contracts chartering a ship and included non-Christian parties who were granted discretion to make the future decisions. Firstly, on 13 December 1325, Bernardus Vantelli promised to receive merchandise to load onto his ship from two men, Hontenie Benabbes and Sayt Benahamut, who were both labelled as Muslims ('Saracenibus'). Vantelli stated without an obligation verb that he would receive goods and merchandise from whomever they wished at Béjaïa: 'Ex peditus praesenti intermi recipium vestras merces et

[132] AHPB, Pere de Torre 6/2, 161v2.

ibo apud bogeam ibi consustando vestras res et merces vobis vel cui volueris' ('having been dispatched with this present order, I will receive your goods and go to Bougie, safeguarding your goods and merchandise for you or whomever you wish').[133] Vantelli specified what the pair of investing merchants were to pay him for carrying the goods in Béjaïa, which appeared to have been cotton and indigo or ivory. As was common in these sorts of phrases, there is a suggestion of continued contact between the parties such that the future choices and payments could be communicated.

Secondly, when Davidus de Apiaria chartered a ship from Borracius Mancofa and Stephanus Bordelli on 7 August 1314, he was able to load the ship with whatever goods he wanted to carry to Cyprus: 'levandi […] de altera ___ mercium quam vos voluerit __ a ea portandi ad partes de Xipri' ('loading […] any other goods that you want to be carried to the regions of Cyprus').[134] As noted in section 7.4, the agreement was an important moment for Apiaria, moving goods, his family and companions, and also a moment in which he acknowledged a need to make a decision about his ongoing movements; Mancofa and Bordelli stated that he could decide whether he wanted to go onto Narbonne after Cyprus with his goods and should inform them by the middle of December. The contract therefore presents a long-term relationship between Apiaria, and Mancofa and Bordelli. The shipmasters would both allow Apiaria to load any goods that he wanted, which was to be decided later, and to decide at a much later point if a further voyage would be made to Narbonne.

The last inter-religious agreement which allowed goods to be decided upon later was full of phrases indicating that the investing party, made up of a Christian and a Jewish merchant, were making decisions about the venture, both at the point of notarising the agreement and in the future. On 5 December 1340, Poncius Rogerius, a merchant and citizen of Mallorca, and Amore Bonallium, a Jewish merchant of Mallorca, chartered a ship owned by Bonanantus Sabet, citizen of Mallorca. Sabet stated that he would load goods from the

[133] ACM, PRT-14554, 60v3-61r.
[134] AHPB, Pere de Torre 6/1, 103r1.

investing merchants or anyone that they wanted in Mallorca until the ship was full ('levabo in dicto ligno a vobis et quibus volueritis omnia averia vestra que in dicto ligno mitere et carricare volueritis hic maiorice usque ad sufficiens omneris complementum dicti ligni').[135] Sabet retained some power, however, as the handing over of freight was to be according to his will and occur within a specified timeframe, four days. This allowed the investing party to decide on both the type of merchandise and the merchants from whom it would be obtained in the future but also created a timeframe within which this was to be done according to Sabet's needs.

Rogerius and Bonallium had also already decided some details about the voyage. The shipmaster, Sabet, stated that, once the merchandise had been loaded, he would go to the place chosen by the investing merchants with his ship: 'facto recendam inde confestum et ibo recce pro vobis cum dicto ligno dicta averiam vestra positum et et [sic] exoneratum apud locum de Tedelas' ('having done this, I will return at once and go back for you with the said ship, carrying your said goods to be unloaded at the place of Tedelas').[136] Again, Sabet stated that he would stay in Tedelas for four days during which time he would receive goods from the investing merchants, or anyone they wanted, until the ship was full. In return for the discretion, Sabet stated in detail the price that the investing merchants were to pay for different types of goods which they might load. The constraining of discretion by listing prices and possible goods in this agreement between a Christian and Jew corresponds with Christian-only contracts with similar specifications shown in section 6.3.2. While some Christian-only contracts limited options for the shipmaster, the three inter-religious agreements did not, instead only specifying that the investing party had discretion to make future decisions, whether Christian or Jewish, sometimes within requirements specified by the shipmaster.

[135] ACM, PRT-14564, 116r2-117r.
[136] Ibid.

While the numbers of inter-religious and intra-Jewish agreements which used discretion and constraints suggests that this mechanism of uncertainty management was used to the same or even greater extent than in Christian-only agreements, the realities of the ways in which the balance of discretion and constraints were included shows that non-Christians in agreements sometimes needed to engage in greater levels of trust work. As a result, the Christian party tended to gain power over the actions of the non-Christian party. While Abenyequir could take part in the choice of voyage location, his repayment was fixed.[137] While Isdrahell would receive his investment back according to his choice of person and place of repayment, Abenxequer was required to repay according to the future choices of B. de Quarte.[138] Overall, the use of discretion and constraints suggests that inter-religious contracts required greater forms of assurance and trust work than those between Christians to both provide assurance and guarantees to the investing party.

[137] Santamaría, *Ejecutoria,* doc. 51; ARM, ECR 343, 243v2-244r.
[138] AHPB, Pere de Torre 6/1, 12r2; ARM, ECR 343, 245r4.

7.8: Judgement

Section 6.4 showed that a small minority of contracts included phrases which allowed the parties to make future decisions explicitly using their professional judgement. This saw investing parties place their belief and expectations of the future on the competence and ability of travelling parties to deal with uncertainty. Discretion which relied on the professional judgement of a party was an elevated form of trust work, providing merchants with a particularly high degree of flexibility and power over the venture. 210 agreements in the set (14.7%) used a discretion phrase which referred to the judgement of a party. Only two of these were inter-religious agreements. Four were agreements between Jewish parties. This means that 1% of the 210 agreements which included the judgement-based granting of discretion were inter-religious, while 2.7% of all contracts were inter-religious. While only a small difference, this suggests that inter-religious agreements were marginally less likely to give discretion to travelling parties than contracts between Christians.

The infrequent use of these phrases in all contracts in the set, including inter-religious agreements, suggests that we should continue to ask whether interpersonal relationships were the main factor which affected the choice of language, both within and between religious groups. On 2 June 1316, Bonjuha Bonavia and Issach Bonavia, Jews of Barcelona, received an investment of £30 from Jacobus de Forebus, a merchant of Barcelona. The travelling men promised the investor that they would undertake trade in various places, as seemed best to them: 'promitimus rnercari, lucrari, negociari et percaciare, emendo et vendendo et portando et transmitendo per mare et terram, prout nobis melius videbitur faciendum' ('we promise to trade, profit, negotiate, and procure, by buying and selling, and by carrying and transmitting by sea and land, as it will seem better for us to do'). This freedom was limited by the addition of 'as far as the parts of Narbonne and throughout the whole of

Provence' ('usque ad partes Narbone et per totam Provinciam') (Figure 2.2).[139] However, this constraint was crossed out and a new limitation was added after the phrase 'prout nobis melius videbitur faciendum'. As previously noted in section 7.4, the travelling men also made a promise to be faithful ('Promittentes esse fideles etc.'). This group of men appeared to negotiate the relationship being made with the notary, and actively made decisions about the venture as a part of contract building. The choice by Forebus to rely on the competence and professional judgement of the Bonavias during the venture, while other parts were decided and specified, suggests that the relationship between the men was such that Forebus felt his relationship with the men was secure enough, or he had enough knowledge of their mercantile abilities, such that he was prepared to place his large investment into their hands without specifying how it was to be used or what sort of goods he wanted in return.

Only occasionally in the set was discretion which used the judgement of a party used in relation to the vessel undertaking a voyage. One of the contracts that included this specification was an inter-religious relationship. This was the agreement between Issachus Montus, a Jew of Villa de Cilforge, and an investing party made up of P. de Rocha, R. Cuniyl and B. Castilionis. Both sides of the agreements had discretion to make future decisions. The investors had an open possibility to invest more goods or money and to later indicate their choice of goods to be returned. Montus had the freedom to choose the vessel that would return him to Barcelona as seemed suitable to him: 'in quocumque vassello michi videbiter faciendam si nobis placuerit' ('on any vessel that seems suitable to me if it pleases us').[140] While Montus was able to use his judgement to decide on his return vessel, he was also constrained by the decisions of the investing party and relying on the communication of their future decisions to know what goods should be returned with their investment. The agreement presented a preparedness for the investing men to rely on the judgement of the

[139] AHPB, Pere de Torre 6/2, 102r1.
[140] AHPB, Pere de Torre 6/2, 161v2.

Jewish travelling merchant, though there was not complete freedom. While the Bonavias had flexibility as a result of their judgement in the very purpose of the voyage, using the investment as they wanted, Montus' discretion based on judgement was smaller and perhaps more practical, relating to the way in which he might return to Barcelona and return the investment to Rocha, Cuniyl and Castilionis.

Four out of 13 agreements (30.8%) between Jewish parties also granted discretion by explicitly relying on the judgement of one party. Compared to the 210 agreements in the whole set (14.7%), this suggests that agreements between Jewish men were twice as likely to include discretion related to judgement, exhibiting a greater amount of confidence between the investing and travelling parties. Three of these agreements were *comanda* investments and one was a partnership agreement. While partnership agreements tended to show greater levels of trust and complex and extended trust work phrases (see section 6.4.3), relationships between Jews in *comanda* investments also exhibited some features of high levels of trust.

Firstly, on 6 December 1318, Homer Ben Nono received £50 from Jucef Ben Amar for trade on Minorca. Ben Nono was given discretion to use any boat he was able to and considered to be best ('in quocumque vasello potero et michi videbitur) to travel from Menorca to Mallorca.[141] He could also use any boat he could to return. The sentence ended with an abbreviated phrase which can be identified as a shortening of 'in good faith': 'in quocumque vassello potero bono etc' ('in whichever boat I can, in good etc.').[142]

Secondly, in 1318, Maldil Daychs received an investment from Jucef Barque, both labelled as Jews. The money was meant to be paid previously through the shipmaster Berengarius Ros. Having received the debt, Daychs promised to use the investment for trade, along with shipmaster Ros, faithfully and lawfully, as seemed good to him: 'promito eas simile cum rebus meis emerciare protractare fideliter et legaliter prout michi videbiter bonum

[141] ACM, PRT-14540, 123r3.
[142] Ibid.

formam' ('I promise to invest and trade them, along with my goods, faithfully and legally, as seems good to me').[143] The whole or part of the investment was then to be sent from Tunis back to Barque in Mallorca, in any vessel which seemed good to Daychs: 'possimus eas de Tunicio vobis maiorcem mitere in quocumque vas videbiter michi bonum formam in totum vel partem et super praedictis promi etc.' ('I promise to invest and trade them faithfully and legally, as seems good to me, and to be able to send them from Tunis to you in Majorca in any vessel that seems good to me, either in whole or in part'). Barque's share of the profit, one quarter, was to be paid after the voyage had been completed.

Finally, on 17 October 1348, Saleme ben Ali ben Cabes received £33.5 from Salamonus Xulelli, both Jews of Mallorca. Ben Cabes promised to engage in trade with the investment, buying and selling, wherever and whenever it seems best to him: 'promitto vobis mercari, lucrari, negociare, et percaciare, quocumque et ubicumque ut melius videam et recognoscam' ('I promise you to trade, profit, negotiate, and procure, wherever and whenever I see and recognize best').[144] This was combined with a promise to faithfully provide an account of the business and return his investment with profit to Xulelli when he wanted: 'cum vobis placuerit, promitto de prædictis vobiscum et vestris fideliter computare et ipsam comandam vobis reddere et restituere' ('when it pleases you, I promise faithfully to account for and return to you the said investment').

In contrast, unlike the partnerships examined in section 6.4.3, the partnership created on 12 December 1335 between Haliffa Coreyef, Jucef Faquerni, and Mosse Faquerni did not exhibit intense trust work. The three men formed a partnership which would continue as long as they were in mutual agreement. Coreyef contributed £220, Jucef Faquerni £90, and Mosse Faquerni £67. They also received investments of £67 from Bonjuha Dellellos and £82 from Hayonus Folio Issach, though both were not partners themselves, and part of the partnership's

[143] Ibid., 85r2-85v.
[144] ACM, PRT-14569, 48v.

common fund was in the form of a ship owned by Jacob Jucef. Coreyef was to work in Mallorca while Mosse Faquerni was based in Barcelona. The document contained few risk or character-management phrases, few promises, and no reference to honesty, true accounting, or faithful behaviour. The only explicit trust work was the oath sworn by Jucef and Mosse Faquerni (see section 7.5).

The agreement did include a phrase granting discretion with explicit reference to judgement, though only one of the three men was explicitly allowed to use his judgement; it was stated that Coreyef could contribute further personal funds to the common account and receive *comanda* investments from 'whoever seems good' to him ('etiam possit comandas recipere a quibus quam mihi videbiter bonum forum') converting them into the common fund ('converitere in dicta comunie racione').[145] The same statement was not made in relation to the other partners. In this specification, the unequal relationships between the three men become clearer. While Coreyef could use his judgement, Jucef and Mosse Faquerni swore an oath to fulfil the agreement. Coreyef is revealed as the leader of the endeavour.

The three *comanda* investments and one partnership agreement between Jewish parties used the same phrases and concepts as the agreements between Christian men and women. While not common, agreements between Jews in the set used discretion based on the judgement of a party in the same way and similar frequency, seemingly unaffected by their position as minority community members in the notarial office. However, these agreements also break with the pattern shown in section 7.3, using the phases in different types of agreements and to set up particular unequal relationships. The individual needs of each relationship shaped how the shared language of trust work was used in both contracts between Christians and Jews.

[145] ACM, PRT-14545, 74v.

7.9: Conclusion

Non-Christians engaging with notarial practices were, from the start, placed in a precarious position, as minorities dealing with the authority of a royally-appointed Christian institution. Despite this position, the notarial contracts demonstrate that non-Christian parties engaged in the negotiation of relationships in much the same way as Christians.

Group identity did not affect the use of the terms *legalis* and *legaliter*, and inter-religious agreements also included a promise not to deceive or commit fraud, as well as monetary penalties, in the same manner and to the same degree as intra-religious agreements. Similarly, the inter-religious agreements in the set granted discretion to roughly the same degree as agreements between Christians (men and women), though it was oddly uncommon for a Jewish investing party to be able to leave the location of trade open to future decisions. Additionally, it appears that Jews and Christians agreed on the significance of making promises to each other within a shared understanding that the future was uncertain and controlled by God. Furthermore, it was not more common for Jewish parties to swear an oath in the agreements. Sometimes Jews swore oaths to each other, using the same method of person management to provide assurance to an investing party of the same religion that the travelling party had good future intentions. Despite the existing precedent for oaths to be used to manage distrust of Jews, the lack of oaths between Jews and Christians, suggests that Jews did not require this additional form of trust making.

However, sometimes inter-religious agreements did more trust work than agreements between Christians. It was more likely, for example, for a Jewish-Christian agreement to involve a form of specific collateral. Similarly, inter-religious agreements tended to include more explicit promises than those between Christians (men and women), though a promise to be faithful was uncommonly made by a Jewish party, perhaps complicated by the need to call upon different communities as the reputational support. Inter-religious agreements also used discretion and constraints to a slightly greater extent than Christian-only agreements,

suggesting a need to engage in greater levels of trust work to create relationships of unequal power. Judgement phrases were less common in inter-religious agreements, though the small numbers of such agreements in the whole set make such a conclusion difficult to evidence effectively. Rather, judgement phrases seem to have reflected the individual needs of each situation and created the specific relationship required for both Christians and Jews.

Overall, the choice of risk, character, and uncertainty-management mechanisms was not greatly affected by the religion or gender of the parties, with Christian, Jews, Muslims, men, and women variously engaging with different parts of the practices of promising and relationship-building. Some relationships presented inequalities, as the agency of Muslims and Jews was decreased in some agreements by the constraining of actions and of discretion and a greater number of explicit obligations. Nonetheless, parties engaged in a shared language of trust work which included oaths (between people of the same religious community) and the formation of obligations with reference to lawfulness, reliability/faithfulness (*fides*), and God. While religious identity may have been a factor on occasion, there is not strong evidence of continued or intense levels of distrust, or higher levels of trust work done by documents creating inter-religious agreements. The contracts support an understanding of the relationship between Jews and Muslims and notarial trust work as one of personal overlap and negotiation. This questions Winer's model of separation and conflict and supports Burns' argument which highlights the ties between the Jewish and Christian communities. However, a model of adaptation and negotiation with a Jewish community which 'mirrored and meshed with the Christian society around them' cannot be supported by the evidence of the documents.[146] The analysis encourages scholars to look more to interpersonal relationships in an analysis of inter-religious relations than has previously been considered, though recognises that some trust work did produce inequalities between the Jewish and Christian communities.

[146] Winer, "Jews," 115; Burns, *Jews,* 38.

Chapter 8 - Conclusions

When Bonanantus Sabet, a citizen of Mallorca, stood alongside Poncius Rogerii and Amore Bonallium, a citizen and a Jew of Mallorca respectively, in front of the notary Francesch Balle near to the port of Ciutat de Mallorca on 5 December 1340 he had an awful lot to think about.[147] Though they had all previously agreed on the destinations to which he would sail with his boat, Bonanantus needed to make a myriad of decisions in order to navigate the complex relationship between investor and travelling merchant. Not only could the unpredictable winter weather cause problems, but these new investors were unknown to him. How could they each make sure the other was going to fulfil their obligations? Surrounded by possibilities and a series of choices, he consciously and unconsciously made decisions about how the relationship was to be formed. Would he persuade them that their investments would be returned by pledging material objects, through a guarantor, or through a monetary penalty? A pledge of all his goods generally seemed to satisfy the men. Would he assure the two new investors of his good intentions? Would this assurance be related to his specific actions or the way in which he would behave more generally in the future? A series of action promises seemed to fit the bill; he promised he would sail his ship to the pre-agreed destinations. He did not need to put his reputation or position within his community on the line this time. But Poncius and Amore did not yet know what goods they wanted to load onto his ship. In response Sabet provided them with a high level of discretion for future decisions, though he stated exactly how much each type of possible good would cost them to send; he did not want to get caught out by later changes in prices. In exchange Poncius and Amore decided to explicitly promise to uphold their side of the agreement in the face of Bonanantus' concern for the need to secure the plans for his venture. After drawing up a long agreement, mainly concerned with laying out actions and possible costs in detail, the three men walked away

[147] ACM, PRT-14564, 116r2-117r.

from Francesch Balle's desk and feeling sufficiently confident in one another, one headed off to prepare his ship and the others to look for the best goods to send on the voyage.

Each time merchants and investors approached a notary in Barcelona and Mallorca, they were engaging in multiple processes at once, surrounded by all sorts of evidence and by potential relationships and decisions which they navigated. Merchants relied on their experiences, unconscious decision-making, and the conscious use of statistics and real-world information to navigate each situation. Each time the notary finished a contract, a new and unique relationship had been created.

The contracts from the period 1240-1350 demonstrate the rich and subtle relationships which were central to Mediterranean trade and highlight the humanness of unique decisions made in each situation. There was no one-size fits all contract. Instead, the 1432 documents in the set allow us to uncover the feelings of individuals about each other, about the future, about their fears, and about the world of long-distance trade in specific and unique moments.

Catalan notarial documents did trust work through three key mechanisms. Risk-management techniques allowed investing parties to ensure that they would receive their investment back in the face of real-world risks. The mechanisms of pledges, penalties, and guarantors minimised the real-world risk for the investing merchants. In contract, character-management techniques assured investing parties that the travelling merchant had the intention to fulfil the contract. 'Action' promises explicitly outlined the intention to follow through on obligations while 'disposition' promises assured the investing party that the travelling merchant intended to behave in a particular way, explicitly defining future expectations. The language of faith, truth, and honesty further spoke to the intended behaviour of a party and sought to emphasise their good character.

Despite these mechanisms, long-distance ventures were full of risks and uncertainties. Contracts acknowledged the unknowns and parties used different uncertainty-management techniques to deal with such complexities. Some investors used the documents

to place future expectations on the competence and ability of merchants, by leaving decisions open and leaving some explicitly to the best judgement or ability of the merchants. Some chose to create a framework of options, limiting the ways in which ventures could be undertaken; shipmasters, travelling merchants, and investing parties used discretion and constraints to create a set of options or open decisions to create a specific relationship which suited their needs. These choices made during contract creation were made with some level of reliance on the notarial institution and the diplomatic work of the kings of Aragon which each contributed a process of trust work to the commercial relationships examined here. Institutional and diplomatic measures were not in themselves, however, sufficient to deal with the risks and unknowns of long-distance trade across the Medieval Mediterranean. Each contract formed a particular interpersonal relationship, in which the parties chose which phrases, obligations, risk, character, and uncertainty-management techniques suited their needs.

Tests of the social factors of gender, family, and religious identity did not reveal significant differences in the use of trust work. Overall these social factors cannot explain the variation in the use of risk, character, or uncertainty-management techniques. The one factor that does align more closely with differences in management techniques is the type of contracts that were being formed. Partnership agreements, between both Christians and Jews, used a greater level of character and uncertainty-management techniques than *comanda* investments, often to create horizontal ties, while *comandas* tended to use such mechanisms to create a power dynamic in which the travelling merchant was beholden to the needs and desires of the investing party.

What becomes most clear is that trust work varied according to the individual needs of each relationship. No one factor explains the choices revealed by analysis of the documents and no one group was treated consistently in a particular way. This complicates the idea of the dominance of group-based trust, supporting the work of Aslanian and Trivellato who warned

against the presumption of in-group trust as natural.[148] The large number of documents in Barcelona and Mallorca, created as a result of a wide commercial network involving Christians, Jews, Muslims, men, women, and family members, has allowed a close examination of the significance of each social factor. Furthermore, the use of the concept of 'trust work' has enabled a detailed and systematic examination of the language choices made by parties, and the testing of the importance of social factors to these choices. The concept of trust work recognises both rational considerations and emotion, the conscious and the unconscious; its sustained development in the thesis builds upon suggestions made by Lahno and Forrest and Haour, allowing the impact of linguistic choices to be more effectively analysed.[149] These contracts reveal that trusting relationships were constructed with varied forms of trust work, made up of constant, kaleidoscopic, and individual processes depending on the quality and nature of each particular relationship seen at particular moments in time. The need for trust work highlights that trust was active and unstable rather than a constant state and encourages us to consider the processes that were needed to construct and maintain it.

While the goal of the thesis was not to write a micro-history, the individual stories of each contract have revealed the importance of the decisions, actions, and emotions of each individual person in each moment. The famous micro-histories tend to study the meeting of one subjectivity with an institution, using legal records to get to the individual; Ginzburg uses the inquisition records to uncover the beliefs of Menocchio and Zemon Davis looks to court records to find Martin Guerre.[150] The notarial contracts of Barcelona and Mallorca instead provide scholars access to the voluntary meeting and negotiation of two or more subjectivities, aided by an institutional third party, which takes us close to the individual decisions being made in each moment. Smail's work encourages historians to see each

[148] Cook et al., "Introduction," 5; Trivellato, *Familiarity of Strangers;* Aslanian, *Indian Ocean.*
[149] Lahno, "Emotional character"; Forrest and Haour, "Trust."
[150] Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, trans. John A. Tedeschi and Anne Tedeschi (Johns Hopkins University Press, 2013); Natalie Zemon Davis, *The Return of Martin Guerre* (Harvard University Press, 1983).

notarial act as a 'legal moment' which 'froze the scene on paper'.[151] The notarial documents here evidence a series of trust moments. Rather than seeing commercial contracts as dry, non-human documents, the very humanness of each moment of creation is highlighted by close study of such a large body of material.

The way the material highlights the individual demonstrates that there are deep levels to the conduct of medieval commerce that need to be studied in greater detail. The traditional narrative of the commercial revolution which looks to the development of markets, banking instruments, maritime insurance, and new technologies such as ships as the main drivers of commercial developments can tend to obscure the individuals who were part of the process.[152] Attention needs to be paid to the mechanisms used for the managing of the complex subjectivities revealed by these contracts. Merchants and investors, in their use of the mechanisms of trust work revealed in the contracts, drew from and played a part in creating, using, and sustaining a culture of trust, a cumulative and social phenomenon, which was a core variable in determining the success of their trading relationships. This culture of trust, far from being a secondary added detail, was the basis of a wide range of complex relationships. The *comanda*, *societas*, and ship chartering contracts had a form from which merchants drew, but all were underwritten and individually shaped by the culture of trust within which merchants operated, adapted to each unique moment. An examination and understanding of this culture of trust is as, if not more important than the legal forms of the documents, or the development of insurance, technologies, and markets, and should be examined in order to understand how commerce functioned in the past. Before looking to the world of banking, we need to look at the world of trust-making decisions taking place between individuals in each situation.

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[151] Daniel Lord Smail, *Imaginary cartographies: possession and identity in late medieval Marseille*, (Cornell University Press, 2000), 23-24.

[152] E.g. Robert S. Lopez, *The Commercial Revolution of the Middle Ages, 950-1350,* (Cambridge University Press, 1976); Stephan R. Epstein, *Freedom and Growth: The Rise of States and Markets in Europe, 1300-1750* (Routledge/LSE, 2000).

The contracts of Barcelona and Mallorca from 1240-1350 form an archive which adds weight to arguments against the centrality of institutions to the formation and maintenance of trust in trade. While the legal system and political structures feature heavily in Goldberg's sources and the arguments of Spufford, and Edwards and Ogilvie, the legal and diplomatic institutions fall to the background in the contracts of Catalan merchants.[153] Instead, institutions were combined with interpersonal relationships and individual choices, factors emphasised by the works of Trivellato and Aslanian.[154] This enabled Catalan merchants to deal with each situation in an individual manner and takes us closer to Greif's idea of a private-order institution in which enforcement by the state is considered secondary to reputation-based community management and enforcement.[155] Institutions such as the law courts, the notarial institution, and support from secular and religious rulers, still played a role in the creation of trust. Supporting the approach of Cook and Santana, the concept of trust work allows institutions to be combined with individual decisions in an explanation of how relationships were formed and maintained.[156] Departing from North's approach, trust work shows that uncertainty does not need to be 'solved'.[157] Rather than looking to institutions as the solution to uncertainty, trust work allows us to see the management and acknowledgement of uncertainty through language choices and institutions together as part of the way in which individuals dealt with risks and unknowns.

The nature of the sources also means that the notarial institution fits centrally into this picture. However, the notary is revealed to be an active part of trust work, as collaborator rather than simply intermediary in the creation of trusting relationships. Even within the purposeful archive of notarial intervention, the interpersonal relationships and importance of individual choices are more central than might be expected.

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[153] Goldberg, *Trade and Institutions*; Spufford, *Power*; Edwards and Ogilvie, "Contract Enforcement."
[154] Smail, *Legal Plunder*; Smail, *Consumption of Justice*; Trivellato, *Familiarity of Strangers;* Aslanian, *Indian Ocean.*
[155] Greif, "Contract Enforceability."
[156] Cook and Santana, "Trust," 260.
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PRT-14567

PRT-14568

Arxiu Diocesà de Barcelona (ADB)

Notarial registers:

RC 3 (1314-1323)

RC 5 (1330-1334)

RC 6 (1334-1336)

Arxiu Històric de Protocols de Barcelona (AHPB)

Notarial registers:

Jaume Ferrer 19/3

Jaume Ferrer 19/5

Jaume Ferrer 19/6

Jaume Ferrer 19/8

Llorenç de Canals 12/1

Llorenç de Canals 12/2

Pere de Torre 6/1

Pere de Torre 6/2

Pere de Torre 6/3

Pere de Torre 6/4

Bartomeu de Vilalta 7/1

Also examined but not included in the database:

Jaume Ferrer 19/27

Jaume Ferrer 19/7

Pere Borrell 13/3

Pere d'Om 15/10

Pere d'Om 15/13

Llorenç de Canals 12/3

Arxiu del Regne de Mallorca (ARM)

Escribanía de Cartas Reales, Series Civitatis et Partis Foraneæ

Prot. 342

Prot. 343

Prot. 344

Prot. 345

Prot. 349

Prot. 351

Prot. 352

Prot. 364

Prot. 366

Prot. 372

Also examined but not included in the database:

Prot. 367

Prot. 368

Prot. 369

Prot. 370

Prot. 371

Prot. 373

Prot. 374

Prot. 375

Prot. 376

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