Form

By great good fortune, a number of inscriptions and wax tablets have survived which are the written versions of at least parts of awards rendered at various times and places, providing reliable evidence of the form in which arbiters expressed themselves. Though the award was what the arbiter spoke, in the later empire written evidence began to be considered more reliable than the oral testimony of witnesses. The Theodosian Code AD435 contained a requirement of writing for the very validity of any decision of a judex in the provinces.\(^{10}\)

11.7 We have issued general legislation that all the judices to whom we have granted authority to apply the law in the provinces shall, when they have heard the causes, state their final decisions in writing. We add this sanction, that any judgment, sententia, which has been-declared, if it is not written, shall not even deserve to have the name of sententia.

The title of that legislation of the emperors Valentinian, Valens and Gratian in AD374 was 'On the Need for Sententiae to be Spoken without Risk'.

The surviving examples show an intermediate stage, where it was thought wise to record the award in writing, even though it was its spoken expression which gave it validity. Earlier stages in the arbitration of Titus Crassius Firmus in the boundary dispute in AD69 between Lucius Cominius Primus and Lucius Appuleius Proculus have been discussed above: the compromissum at 8.2 and the interchange between the parties in relation to the deposit of the boundary fence posts at 10.31 and 10.32. Only the introduction to that award has survived, 7.32, but an award from Histonium is set out more fully, recording an earlier award of AD 19.\(^{11}\)

11.8 Gaius Helvidius Priscus, arbiter ex compromisso between Quintus Tillius Eryllus, the attorney, procurator, of Tillius Sassius, and Marcus Paquius Aulanius, the official, actor, acting on behalf of the municipality of Histonium, in the presence of both of them, having taken the oath pronounced his award in these words written
Since the officials of the town of Histonium have produced the old book which Tillius Sassius requested should be put in evidence, and in it was written, in relation to those places which are in issue in this matter, the determination of Quintus Coelius Gallus, on 25 April in the consulships of Marcus Junius Silanus and Lucius Norbanus Balbus between Publius Vaccius Vitulus as principal, owner of the Herianic land in Histonium, and Titia Flaccilla, the predecessor in title of Tillius Sassius, owner of the Vellan land, made in the present dispute over the boundaries, so that in the presence of both the then owners of the lands Gallus should put an end to it in this way. First he should fix a peg about eleven feet from the oak tree but the peg is missing from the ditch, [gap] and it is not clear how many feet were written because of the age of the book which is faulty in that part in which the number of feet appears to have been written, [gap] but so that between the peg and the ditch there should be a common road, which should be the sole property of Vaccus Vitulus, from that peg in a line to the marked ash tree a peg was to be fixed by Gallus and from that peg in a line to the far bank of the pond of Senanus into the more lefthand side, the straight end by the said Gallus [here the writing stops].

First, that shows that awards were, at least on one occasion, recorded 'in an old book'. Presumably this was more likely to be kept safe if it was held by a municipality but, even there, its custodians had not managed to keep it intact. The terms of the award are technical and their drafting may well have had the assistance of a surveyor. Certainly the measuring would have needed technical skill. The parties were represented by attorneys. The arbiter took an oath before pronouncing his award.

10 Theodosian Code 4.17.1.

11 FIRA 3.164 and see 7.19