

# LIABILITY WITHOUT A PRIOR AGREEMENT: QUASI CONTRACTUS

*Jurbanik & J. Alonso: The Principles of Roman Law, UNIT 2.10*

# TERMINOLOGY:

I. 3. I 3.2 Sequens divisio (sc. obligationum) in quattuor species diducitur: aut enim ex contractu sunt aut quasi ex contractu aut ex maleficio aut quasi ex maleficio.

The following division of obligations is deducted in four types: they are either from a contract, or from a wrongdoing, or as if they were from a contract, or if they were from a wrong doing

# A. NEGOTIORUM GESTIO

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  - (why not minoris? --> Lex Laetoria, exceptio Legis Laetoriae, restitutio in integrum

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- The actions (based on good faith):
- Dominus negotii:
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- Negotiorum gestor
  - actio negotiorum gestorum contraria
- modern importance/non-existence in common law.

# THE ORIGINS: THE CRUEL PORTUGUESE

D. 3.5.20 (21). Paulus, On the Edict, Book IX. Servius responded, as it is reported at Alfenus' Thirty-ninth Book of the Digest, that when three men were captured by the Lusitanians, and one of them was released on condition of his bringing a ransom for all three, if he did not return, the two others would be required to pay a ransom for himself also; and he having refused to return, and for this reason, the others having paid his ransom, as well as their own, Servius answered that it was equitable for the praetor to grant them a trial against him.

# LIABILITY OF GESTOR

D. 3.5.10 (11) (Pomponius, Commentary on Quintus Mucius, book 21) If you transact the business of an absent party without his knowledge, you should be liable both for negligence and fraud (dolus & culpa); but Proculus is of the opinion that you ought sometimes to be responsible for accidents, as for instance, where you attend to some new business in the name of the absent party which he was not in the habit of transacting, for example, by purchasing new slaves, or by engaging in some other enterprise, for if any loss to him resulted therefrom, you would be responsible; but any profit would belong to the absent party, and where profit accrued in some instances, and loss was sustained in others, the absent principal should set off the profit against the loss.

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Marcus is a wine merchant. Having decided to leave for a long journey he handed over the keys to his store to his friend Aulus. After a few weeks Aulus noticed that wine had started getting sour. He immediately sold all the amphorae to the local military garrison. Only because of that he managed to obtain 100 (of the original value of 200). Willing to recover some of the loss he invested the money in buying 10 oxen. Five of them, however, died of mouth and feet disease. How much should he pay back to his friend?

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What if due to the M&FD epidemic the price of a single ox rose to 50?

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D. 3.5.9(10).1 (Ulpianus, Comm. on the Edict, book 10) Where a man brings an action based on the ground of business transacted he employs this action not only when what he did had some effect, but it is sufficient if he conducted the business usefully even if it produced no effect; and therefore if he repaired a building, or cured a slave who was ill, he still has a right of action on this ground, even if the house was burned, or the slave died; and this opinion Labeo also confirms; but Celsus says Proculus states in a note on Labeo that the action should not always be granted; for what if he repaired a house which the owner had abandoned as not being worth repairing, or which he did not think he needed? According to the opinion of Labeo, he is imposing a burden upon the owner in this instance,

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since everyone is allowed to abandon property to avoid an action for threatened injury. Celsus gracefully ridicules this opinion; for he states that the party who transacts business in a useful manner has a right of action on this ground; but he does not attend to the matter as he should, who adds something which was not necessary, or imposes a burden upon the head of the household. What Julianus wrote is applicable where he who repairs a house or cures a sick slave is entitled to an action based on business transacted, if what he does is an advantage, even if the general result was not useful. I ask what must be done if he thought he was acting usefully, but it did not profit the head of the household? I say that he will not be entitled to an action based on business transacted, for the beginning ought to be useful, even though we do not consider the result.

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# A CASE

Livia leaving for a long-desired trip to Egypt asked her best friend Marcia to take care of her collection of cacti. Marcia, well-known in Pompei for her passion for water-lilies took up to the task very seriously. Much to her dismay, the plants rotted quickly... moreover a couple of weeks before the scheduled return of Livia her home got on fire. Marcia decided to renovate the place, she paid for the roof, repainting of the walls in the very trendy Pompeian rouge. To make a nice surprise she also contracted a local painter, Salvius, to paint a Egyptian-styled fresco. Upon her come-back Livia finds rotten plants and a kitsch landscape painted on horrifying red walls. What may the women do to each other?

# B. TUTELA

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- Actio tutelae directa/contraria

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- also ex stipulatu on the grounds on a possible cautio rem pupili salvam fore
  - Do you promise that the pupil's (my) estate will remain safe? I do!

# C. CO-HEIRS, CO-OWNERSHIP

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- Actio familiae erciscundae

# D. BEQUESTS

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- Per damnationem (heres meus damnas esto dare...

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- Per damnationem (heres meus damnas esto dare...)
- Sinendi modo (heres meus damnas esto sinere...)
  - actio ex testamento in personam, iuris stricti (earlier: legis actio per manus iniunctionem:
  - A double value of the bequest (executive title): lis infitiando crescit in duplum)

# E. SOLUTIO INDEBITI & CONDICTIONES

- **Condictio furtiva**

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- Condictio ob rem dati
- Condictio ob turpem causam
- Condictio sine causa (ob iniustam causam)
- **Condictio furtiva**