

José Luis Alonso & Jakub Urbanik
The Roman Law of Obligation II
Chair of Roman and Antique Law.
University of Warsaw

Obligations:

Introduction 2

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- Iura in personam vs. Iura in rem

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- Divisions of obligations:
 - Civil and praetorian actions
 - Natural obligations
 - Formulae of strict law and good faith
 - Obligations of strict law and good faith

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- The content of an obligation
- Divisibility and indivisibility of an obligation

Iura in personam vs iura in rem

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- Caius sells the Estate to Sempronius, who expels Titius from it. What can Titius do?

Gai. 3, 180-181

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181. Hence, if I request what is due to me in a trial with civil effects, it is *ius civile* itself that excludes a second action, as the statement that the defendant owes me something will be false, because by the *litis contestatio* he ceases to be indebted. The case is different if the first trial was effective only on the basis of the *imperium* of the magistrate; for then the obligation will still continue to exist, and, therefore by *ius civile* I can bring the action a second time; but I will be barred by an exception grounded on the previous judgement or *litis contestatio*. We shall explain in a subsequent commentary what trials have civil effects, what magistratual.

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- If the defendant ceases to be debtor in the moment of the *litis contestatio*, how is it possible for the judge to condemn him afterwards?

Iura in rem ('real' rights)

**In rem: on the thing
(possess, use...)**

erga omnes

**right ≠ action
the lawsuit confirms them**

**Iura in personam =
Obligations
(‘personal’ rights)**

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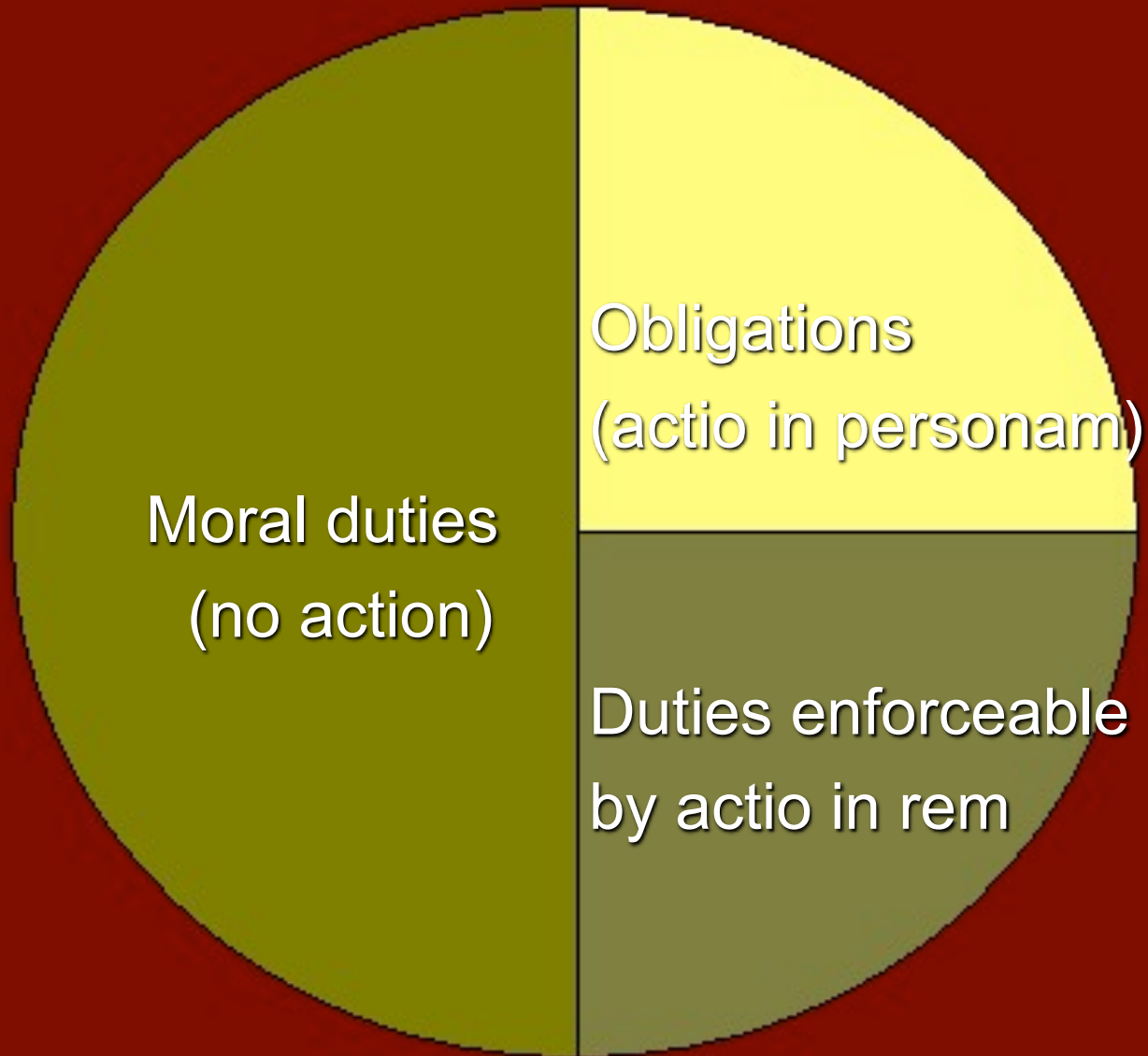
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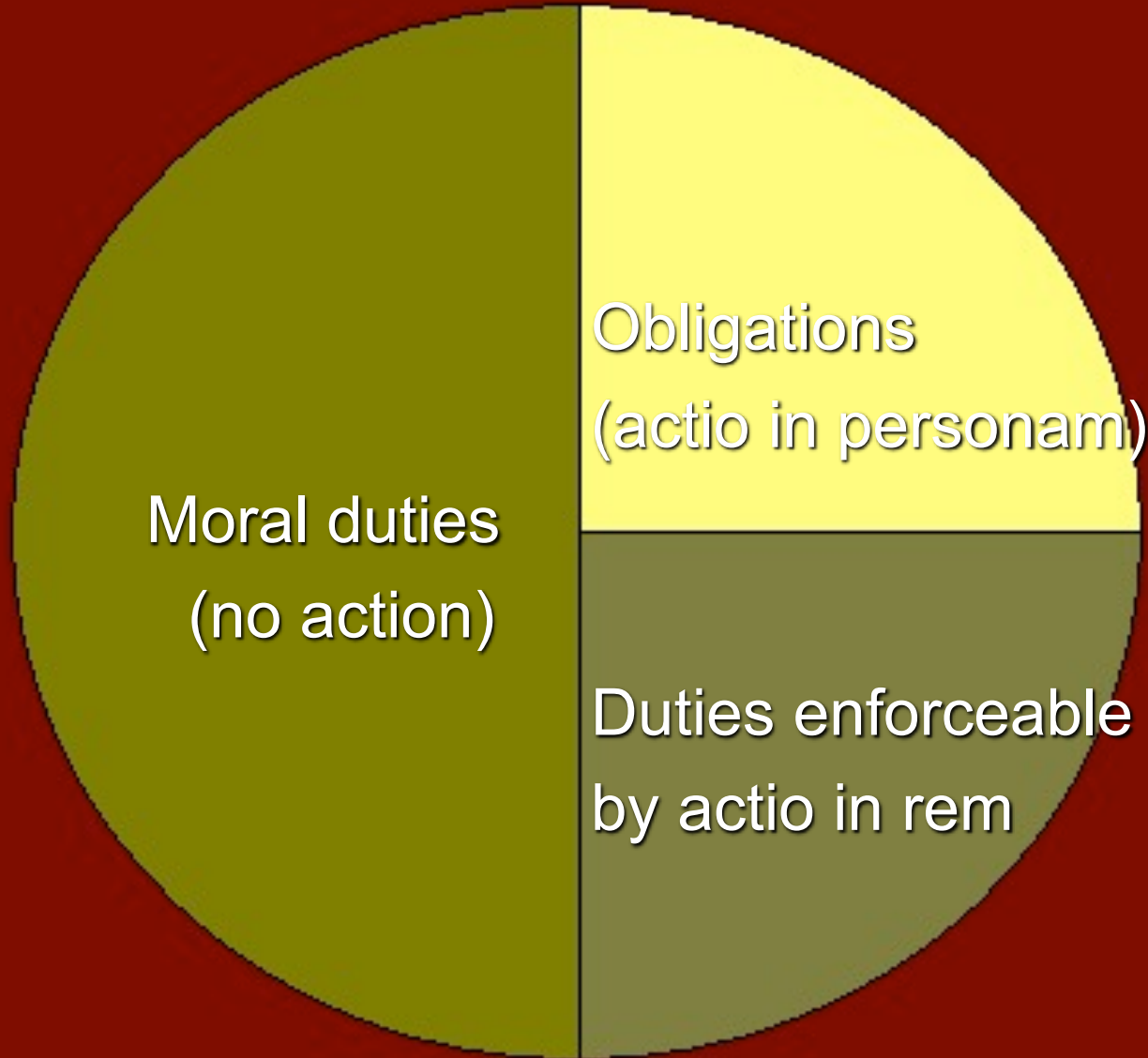
**In personam: on the
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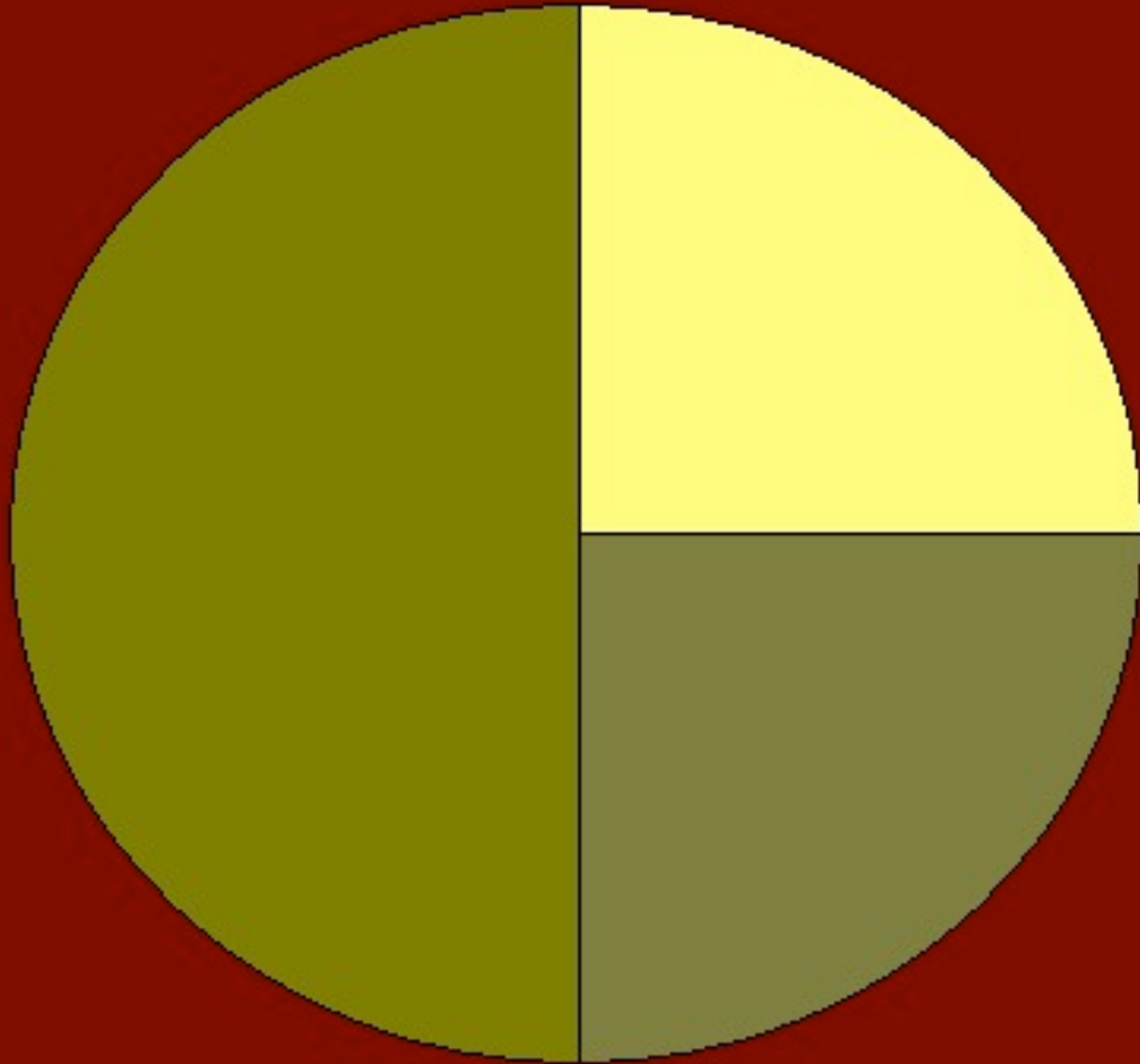
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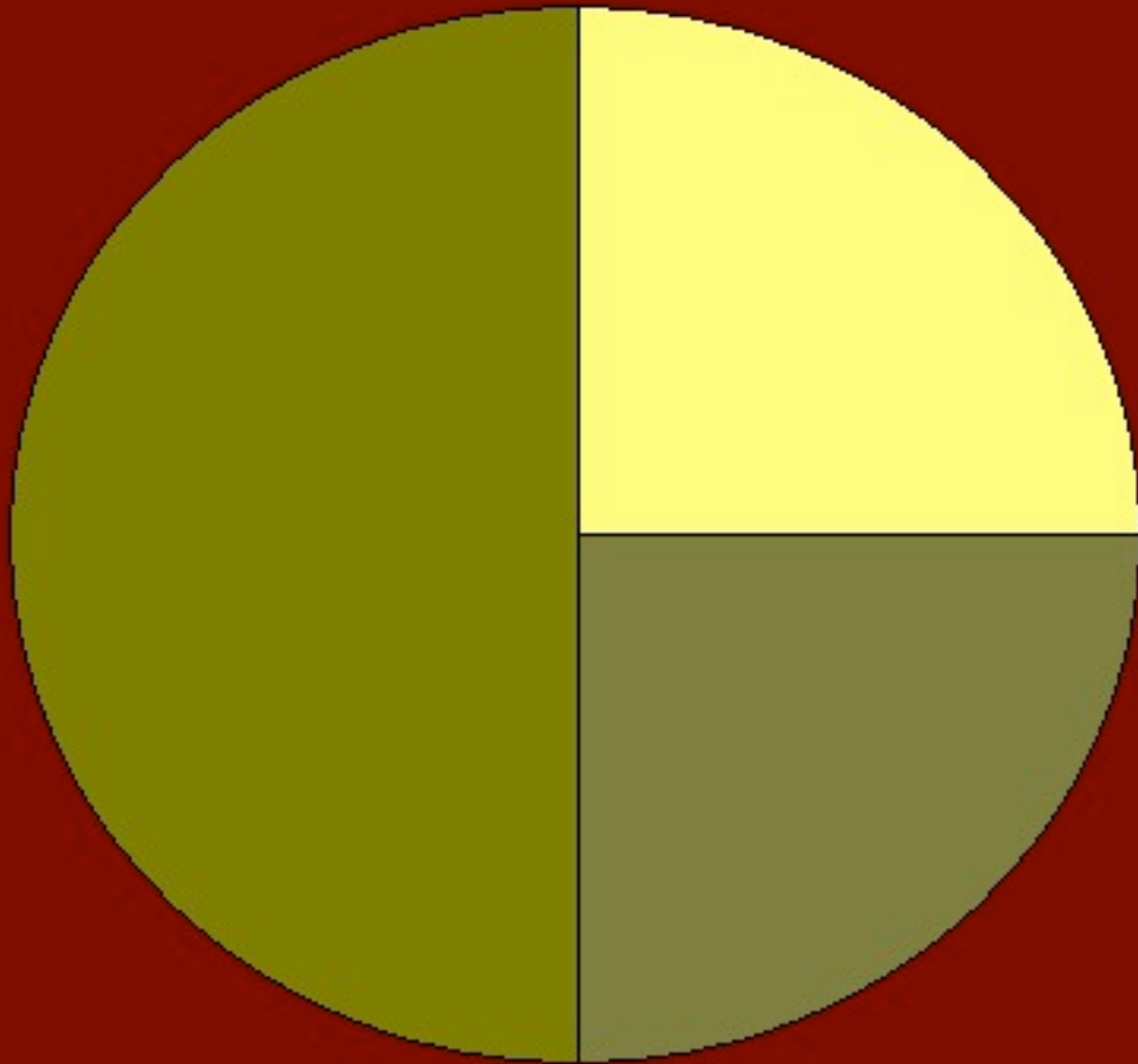
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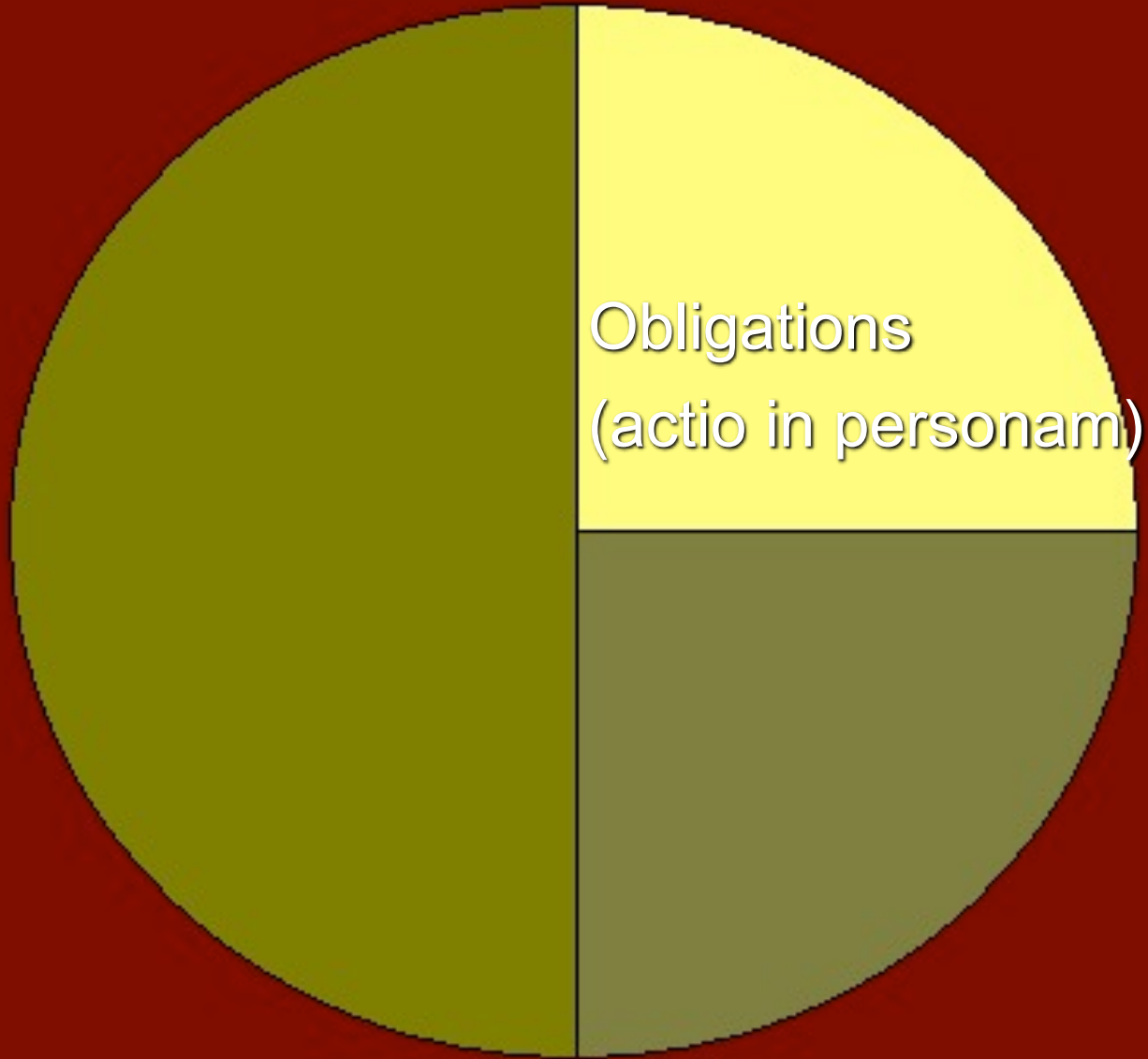


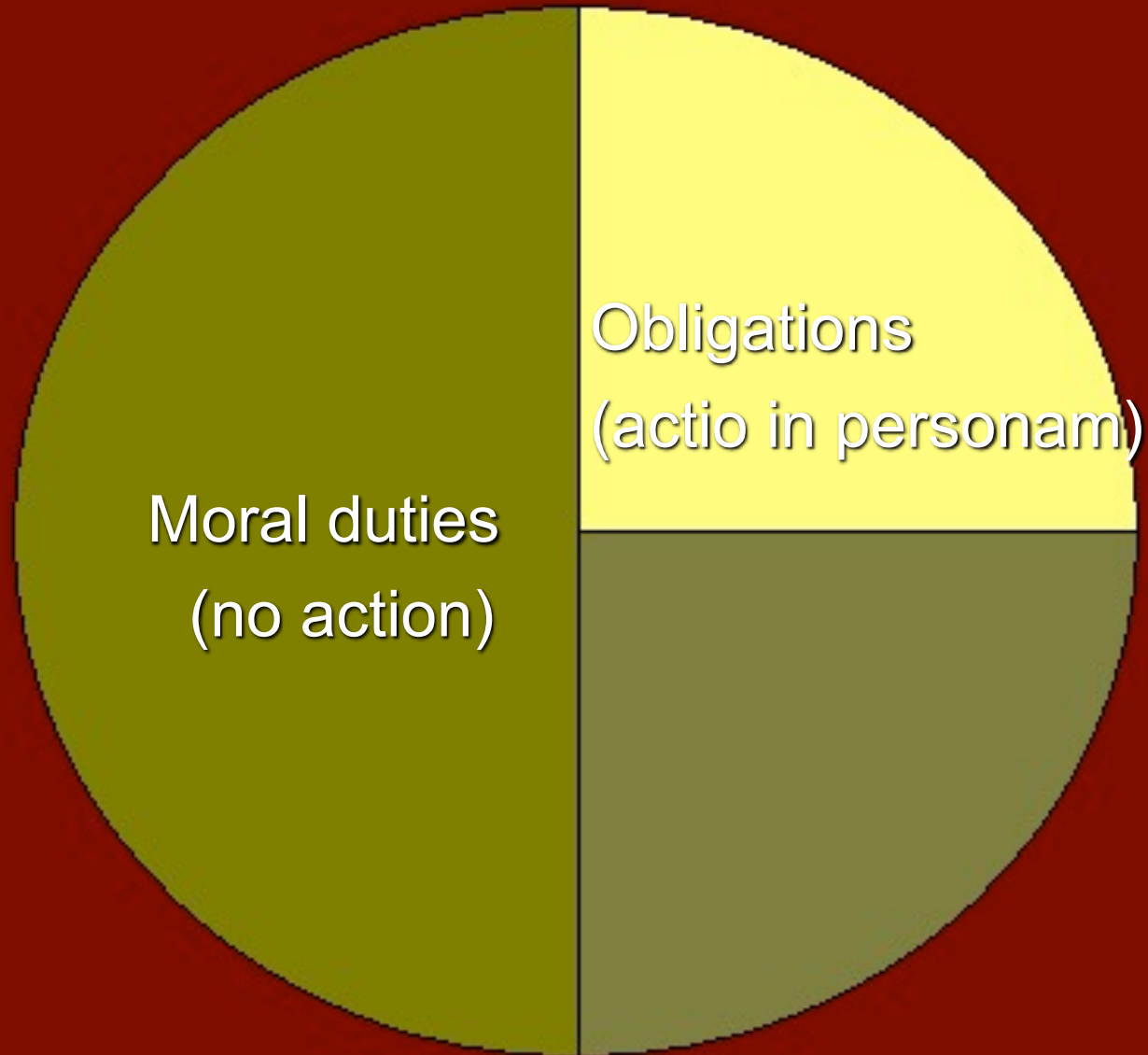
The usufructuary must restore the object once the usufruct is finished. Is this duty an obligation?

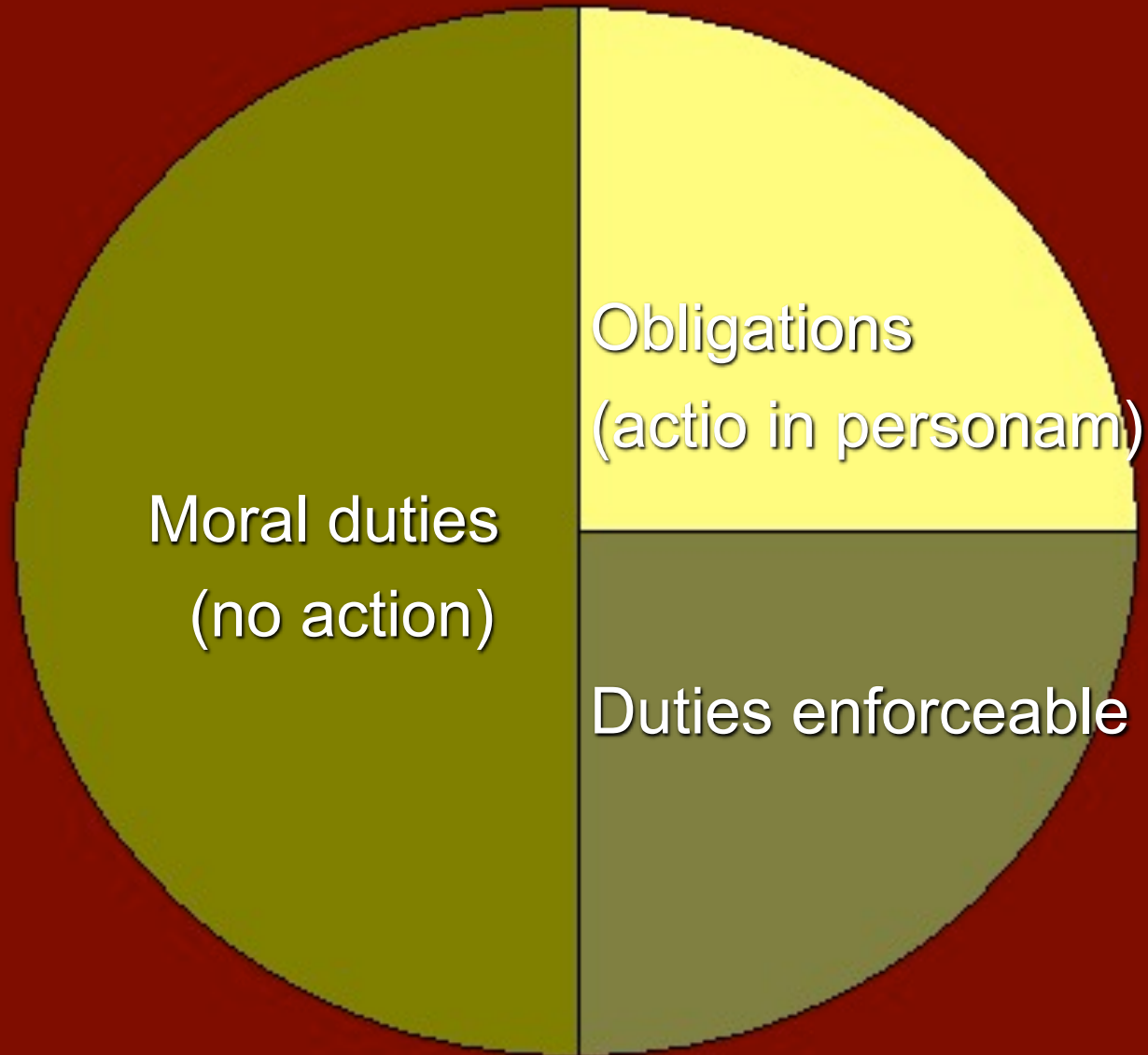


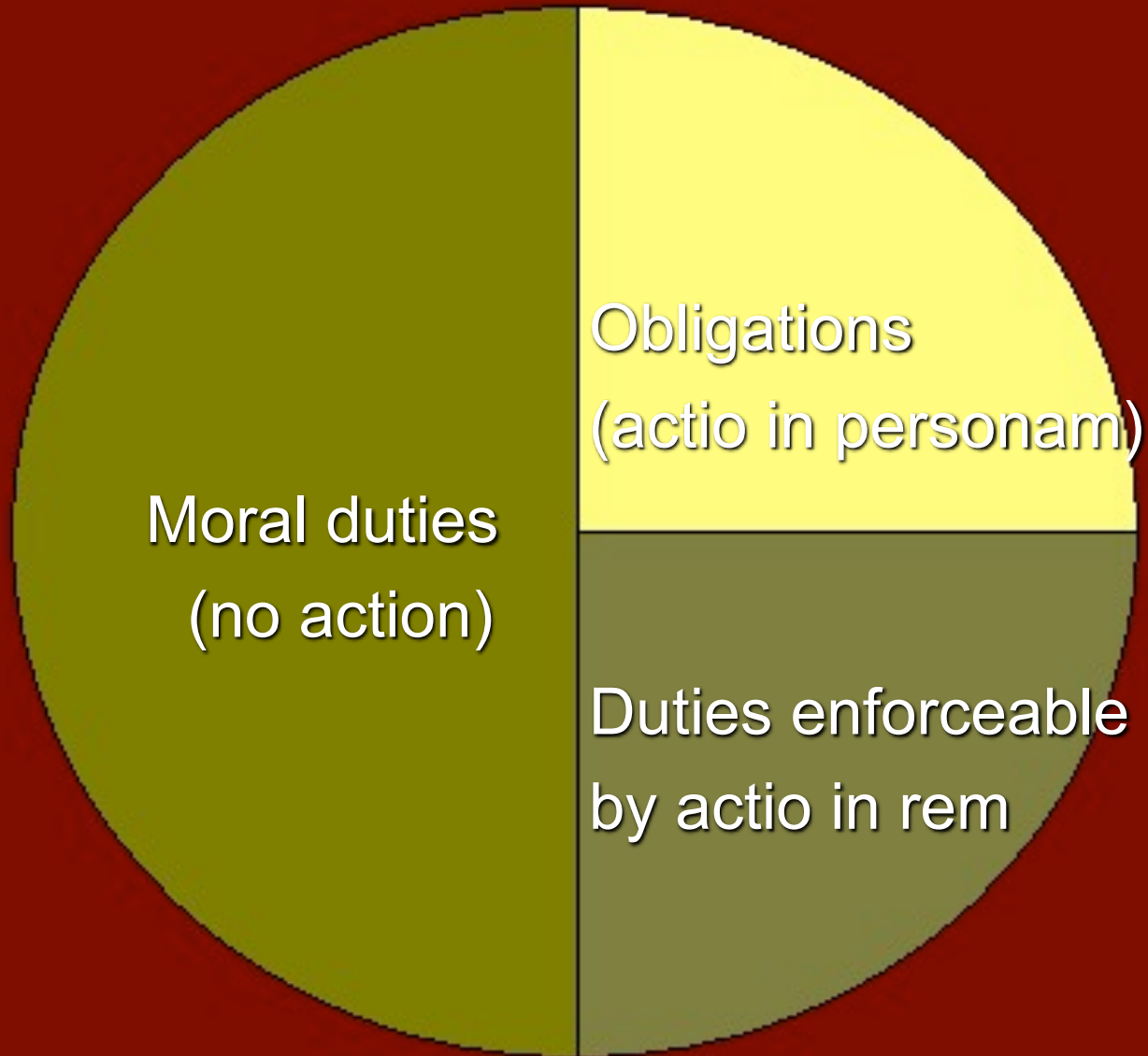












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- Let Titius be judge. If it results that the plaintiff had given the Estate in question to the defendant as guarantee for an owed sum, and this sum has been paid, or other satisfaction accepted by the defendant, or the defendant is to blame for its not having been paid, let the defendant be condemned to pay to the plaintiff as much as this matter will represent; otherwise, let him be absolved.

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The principal division of all obligations resolves itself into two classes; for they are either civil or praetorian. Civil obligations are such as are created by statute, or at all events are approved by the Civil Law. Praetorian obligations are such as the Praetor has established by virtue of his jurisdiction, and these are also styled honorary.

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Civil obligation = civil action // Praetorian obligation = praetorian action

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- Why 'we make a misuse of this word'?
- Why only slaves and not also children in power?

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- Paul. 10 Sab. D. 12,6,13 pr.: A slave may be bound by a natural obligation; hence, if anyone should pay a debt for him, or the slave himself should do so after being manumitted (as Pomponius says) or even before from the peculium, the money cannot be claimed back; and because of this, a surety who had been accepted for the slave will be liable, and also a pledge given on his account ...

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- Why 'natural'?
- What is the connection between 'repeti non poterit' and 'fideiussor.. et pignus tenebitur'?

Obligationes

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graph TD; A[Obligationes] --- B[Civiles = civil action]; A --- C[Praetoriae = praetorian action]; A --- D[Naturales = no action];
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- The buyer of a horse is to collect it on a certain date. He does only one week later. Who pays for the expenses?
- The amount the seller will have to claim is not absolutely decided from the moment of the contract. Compare to a promise of a certain amount of money, or to a loan.

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- Reduction of the price = damages, deducted from the price. Compensation.

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63. The judge could also not to consider any set-off, at all, as he is not expressly directed to do so by the terms of the formula; but, for the reason that this seems to be proper in a *bona fide* action, it is therefore held to be part of his duty.

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- Transfer of ownership and other iura in re is divisible -except for iura in re which are themselves indivisible, like servitudes-
- Dare-obligations. All the rest (including the obligation to transfer possession), facere-obligations = indivisible.

A rule

- Can we formulate a rule?
- The divisibility of the obligation does not depend on the material divisibility of its object; rather, on the divisibility of the conduct expected from the debtor
- Transfer of ownership and other iura in re is divisible -except for iura in re which are themselves indivisible, like servitudes-
- Dare-obligations. All the rest (including the obligation to transfer possession), facere-obligations = indivisible.

Ulp. 20 ed. D. 45,1,72pr.: Stipulations are not divided when they relate to things which are not susceptible of division; as, for example, rights of way of every description, the privilege of conducting water, and other servitudes. I think that the same rule will apply when anyone stipulates for the performance of some act, for instance, the delivery of land, the excavation of a ditch, the building of a house; or for certain services, or for anything else of this kind, as their division annuls the stipulation. ...

Obligations - content

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graph TD; A[Obligations - content] --- B[Dare]; A --- C[Facere]; B --- D[Divisible]; C --- E[Indivisible → Solidary]
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Dare

Divisible

Facere

Indivisible → Solidary

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- Obligatio generica = intentio incerta // obligatio specifica = intentio certa?

