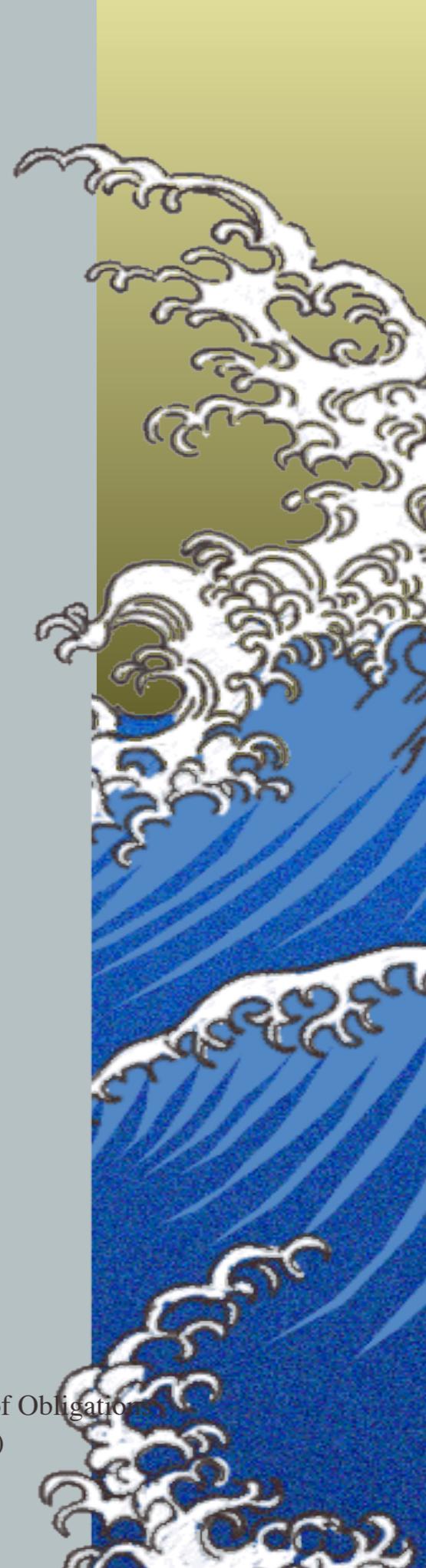


SOLUTIO INDEBITI

undue payment = unjustified enrichment (?)

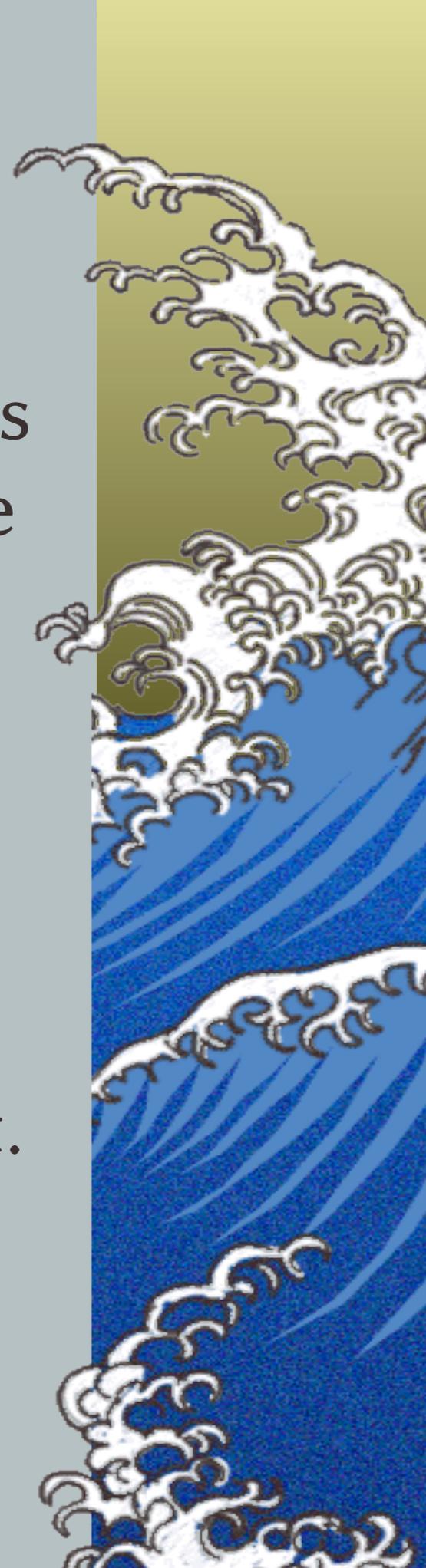


Unjustified enrichment (?)

- Titius' father imposed upon him by testament the obligation to transfer to Marcus the slave Stichus. Titius did so, and some time later a new testament was found, in which nothing was left to Marcus.

Quid iuris?

- *Condictio indebiti*
- In the meantime, Stichus himself has received 10.000 by virtue of Lucius' testament. How much can Titius claim?
- *Condictio = datio*



?Unjustified enrichment?

& condictio

- Stichus was appointed by Marcus as his general administrator, and almost brought him to the point of bankruptcy. Should that diminish Titius claim?
- *Condictio indebiti*
- Let Caius Aquilius be judge. If it appears that the Defendant ought to give 1000 coins to the Plaintiff on the basis on civil law (*dare oportere*), which is the case-matter here,
- Let the judge condemn the Defendant in favour of the Plaintiff for 1000 coins, if it does not appear, let the judge acquit him.



Condictio and undue payment

- You buy from me a slave, Stichus, together with his peculium. Stichus steals one of my favourite horses. Assuming it to be part of Stichus' peculium, you sell the horse for 1000. Quid iuris? What if the horse dies in power of the buyer?
- *Africanus, Questions, Book VIII (D. 3,5,48): Where a slave whom I have sold steals something from me, his vendor, and the purchaser sells the article, and then it ceases to exist, an action for the price should be granted me on the ground of business transacted; as would be the case if you had attended to some business which you thought to be yours, when in fact it was mine ...*



causa data causa non secuta

Seia gives as a dowry to her future husband, Titius, jewels for value of 10.000. The day settled for the wedding, Titius does not appear. Some days later Seia meets Martia in the theatre, adorned with her jewels. Titius is now engaged to Martia, and has given her the jewels as bridal present. Quid iuris?

When is ownership transferred, and why? What effect has the cancellation of the planned marriage?



Traditio

CAUSE (near): *iusta causa adquirendi:*
is the transfer justified?



Ownership transferred



no passage of ownership:
rei vindicatio

CAUSE (remote): *iusta causa retinendi:*
is the retention justified?



Solutio indebiti
condictio

A SUM-UP

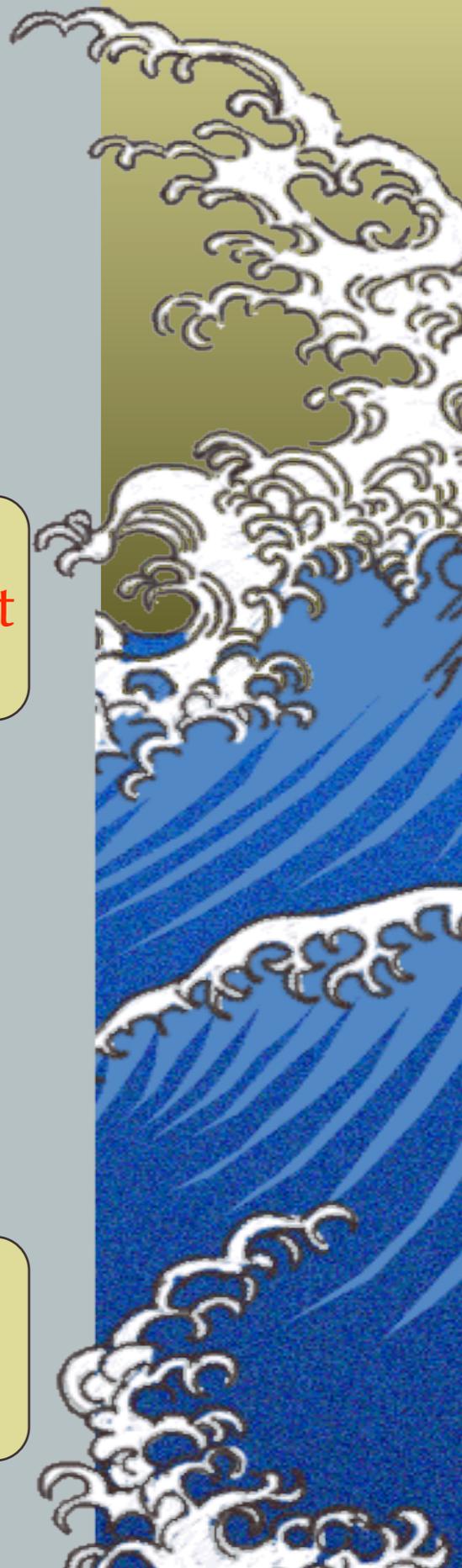
• Modern: Unjustified enrichment (cf. The concept of *versio*: in *actio de in rem verso*)

versus

claim available
always as long as there is enrichment
(if spent in good faith: no claim)

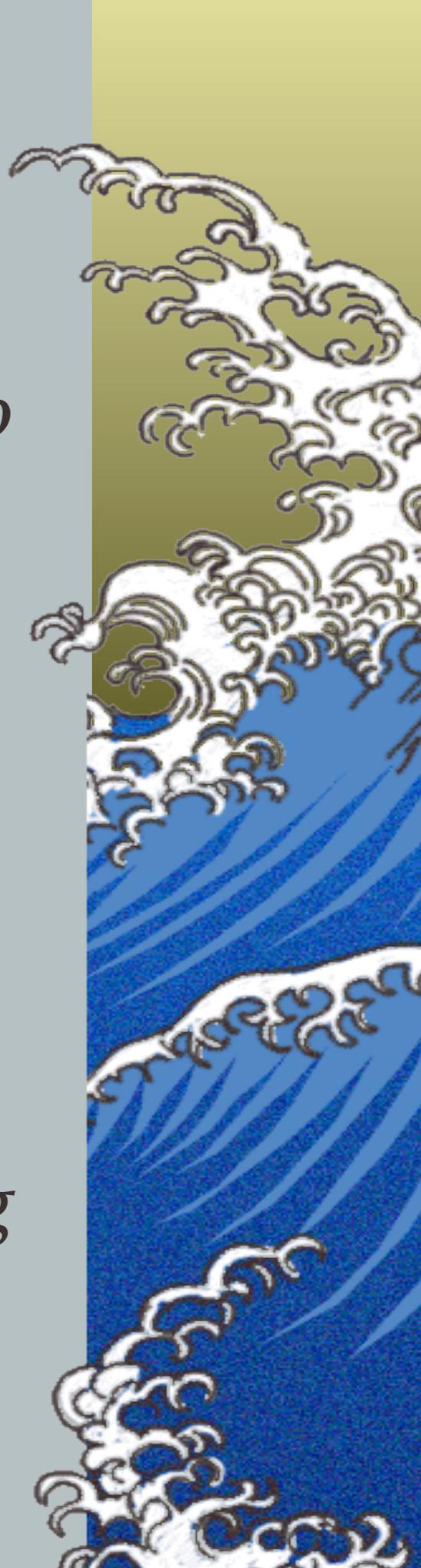
• Roman Undue payment (*solutio indebiti*)

claim available only if the was *datio*
(payment), enrichment irrelevant



No datio, yet condictio available

- *Titius mistakenly ground grain belonging to his neighbour Caius and made bread with it.*
- *What may Caius claim?*
- *Condictio ???*
- *Only in post-classical times: condictio sine causa*
- *What if Titius knew the grain did not belong to him?*
- *Condictio furtiva*



problems concerning the cause

- You let a house for hire for a year. The year passes but the hirer doesn't leave. Can you use *reivindicatio*?
- A relative of yours, during a terminal illness, gives you his books. If he recovers from the illness, he will be entitled to claim them back; but, by means of *reivindicatio*?
- You buy a gold ring, and it's agreed that the price will be paid in a month. The month passes and you have no money for paying. Can the ring be claimed back?



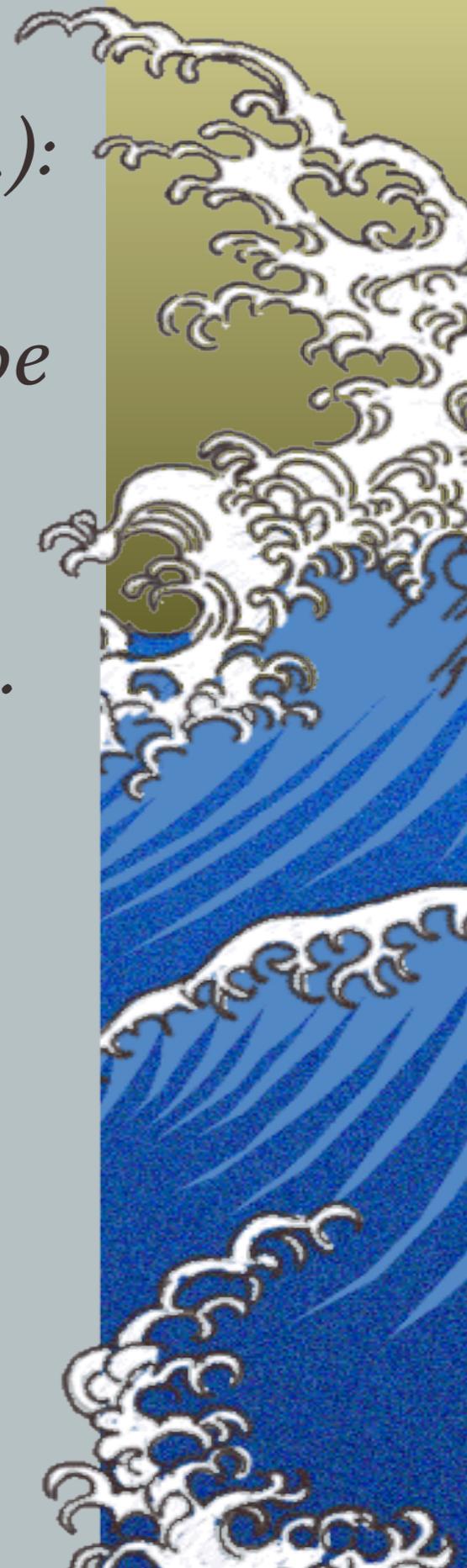
ob rem datam

- I give you 10.000 so that you free a slave of yours, that happens to be my natural son. But the slave seriously offends you and you decide not to give him his freedom, and to keep the amount in compensation for the offence. Quid iuris?
- *Condictio ob rem*



causa turpis

- *Ulpianus, On the Edict, Book XXVI (D. 12,4,1pr.): Where money is paid on account of some act which is not dishonourable, as that a son shall be emancipated, or a slave manumitted, or a suit abandoned; then, if the act is performed, an action for the recovery of the money will not lie.*



causa turpis

D. 12.5.1(Paulus, On Sabinus, Book X) (1) Hence where anything is given for an honourable purpose, an action can be brought for its recovery only where the purpose for which it was granted was not accomplished. (2) Where, however, the receiver is the one guilty of immorality, even though the purpose be accomplished, an action can be brought for the recovery of the gift.

D. 12.5.2. Ulpianus, On the Edict, Book XXVI. For example, suppose I gave you something to induce you not to commit sacrilege or theft, or not to kill a man. In this instance, Julianus says that if I give it to you to prevent you from killing a man, an action for its recovery can be brought. (1) Moreover, the rule is the same, if I gave you something on the condition that you would return to me property which I deposited with you, or would restore to me certain documents.



causa turpis

- What, if the act is dishonorable?
- Example 1: I give you 10 so that you kill Marcus.
- *In pari turpitudine, melior condicio possidentis*
- Example 2: You ask me 10 for giving me back my jewels, that i left to you in custody
- *Condictio ob turpem causam*



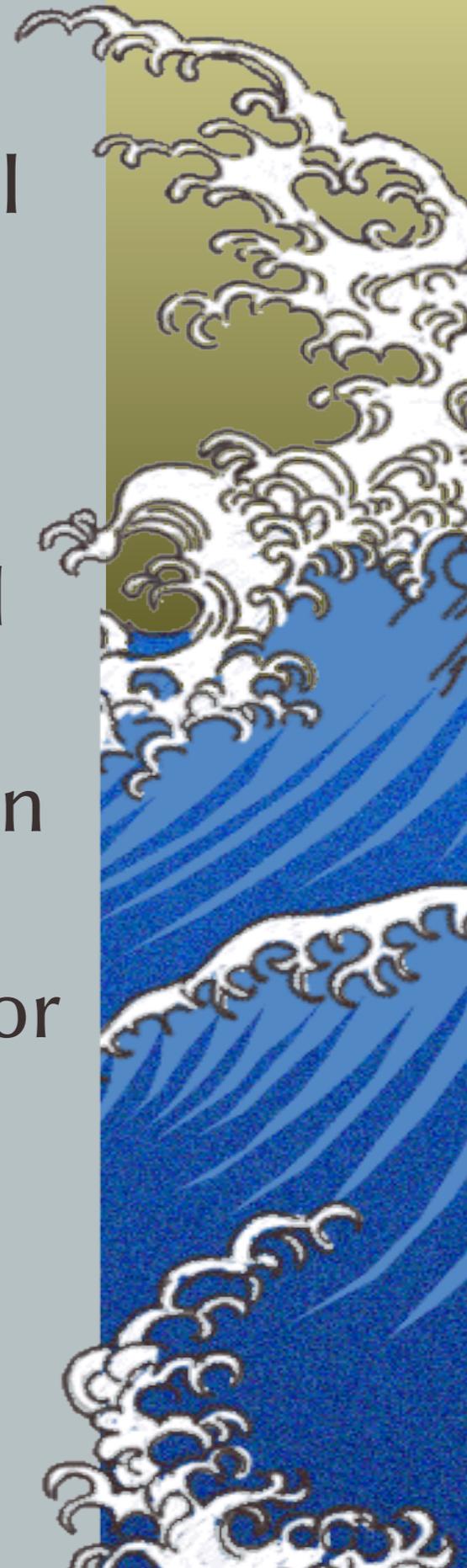
Condictio ob turpem causam who is immoral?

- D. 12.5.4. Ulpianus, On the Edict, Book XXVI. (3) Money paid to a harlot, however, cannot be recovered, as Labeo and Marcellus state; but the principle is not the same, as the question is not whether there is immorality on both sides, but that it exists only on the part of the giver; as the woman acts in an immoral manner because she is a harlot, but she is not immoral when she accepts the money since she is a harlot.



wrong motivations

- Pomponius, *On Quintus Mucius*, Book XXVII (D. 12,6,52): We make payment either for a good reason or for a purpose, and the reason may depend upon what has already passed, for example, where I make payment because I have obtained something from you or something has been done by you, so that, even if the reason is nonexistent, no action will lie for the recovery of the money; but payment for a purpose is made where some act is to be performed, and if this does not take place, a suit for the recovery of the money will lie.



Active legitimation

- Your deceased uncle has instituted you as his only heir. Among the things you find in his house, there is a closed and sealed box containing, according to the attached note, 10.000 sesterii. You give that money away as a loan to Titius. Later on, you discover that the casket and the money belonged to a neighbour, Caius, who had deposited it with your uncle just to have it under safe custody while his house was being renovated. Who can claim the money back from Titius and with which action?
- *Reivindicatio* is possible for the owner, Caius, only if he can prove his ownership. If not?
- *Condictio*, for the one who gave the money. And Caius?



Pomponius,

On Plautius, Book VI (D. 12,1,12)

- When you receive money as a loan from an insane person, who you think is of sound mind, and the money is expended for your benefit, Julianus says the insane person will have a right of action for its recovery; for it is the rule that where a right of action is acquired by a party who is unaware of the fact, it is also, under the same circumstances, acquired by one who is insane. Moreover, if anyone makes a loan to a slave and afterwards becomes insane, and the slave spends the money for the benefit of his master, an action for recovery can be brought in the name of the insane person. And where any one lends the money of another, and subsequently becomes insane, and the money is expended, the right to sue for its recovery is acquired by the insane person.
- Consumed the money by Titius, can Caius claim somehow against you?



The stolen marble

- Titius is having a luxurious villa built at his property in Baiae. One night, a thief enters the property, and takes the most valuable materials - marble, precious wood, semiprecious stones-. When he has already loaded his wagon and is about to leave, he is discovered. In the chase that follows, seeing that his speed is dramatically diminished by his charge, he leaves part of the materials at Caius' property, where a house is also being built. The next day, the constructor of Caius' house, assuming that the materials have been provided by Caius, uses them, in such a way that they cannot be separated any more from the building. Quid iuris?

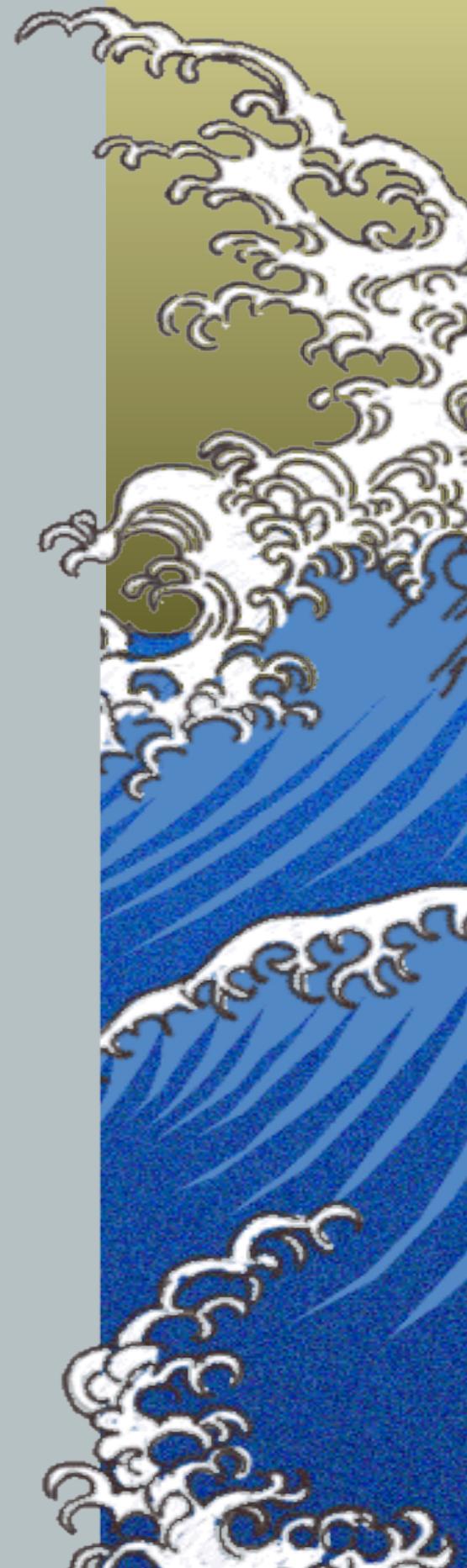


Breaking the limits:
the new ways of contract
making in Rome



The Steps

- Contractual nominalism.
- the role of *stipulatio*
- *Pacta*
- ‘innominal’ contracts
 - *condictio indebiti*
 - *actio praescriptis verbis*



Contractus reales innominati

D. 19.5.5: Paulus, *Questions*, book 5

My natural son is your slave, and yours is my slave. We have agreed so that I would manumit yours and you mine. I have manumitted but you have not. The question has arisen as to under what action you will be liable to me. In the consideration of this point every kind of transaction relative to the delivery of property must be taken into account which is shown in the following example, namely: I either give to you that you may give to me, or I give to you that you may perform some act, or I perform some act that you may give to me, or I perform some act for you that you may perform another for me. In these cases it may be asked what obligation arises.



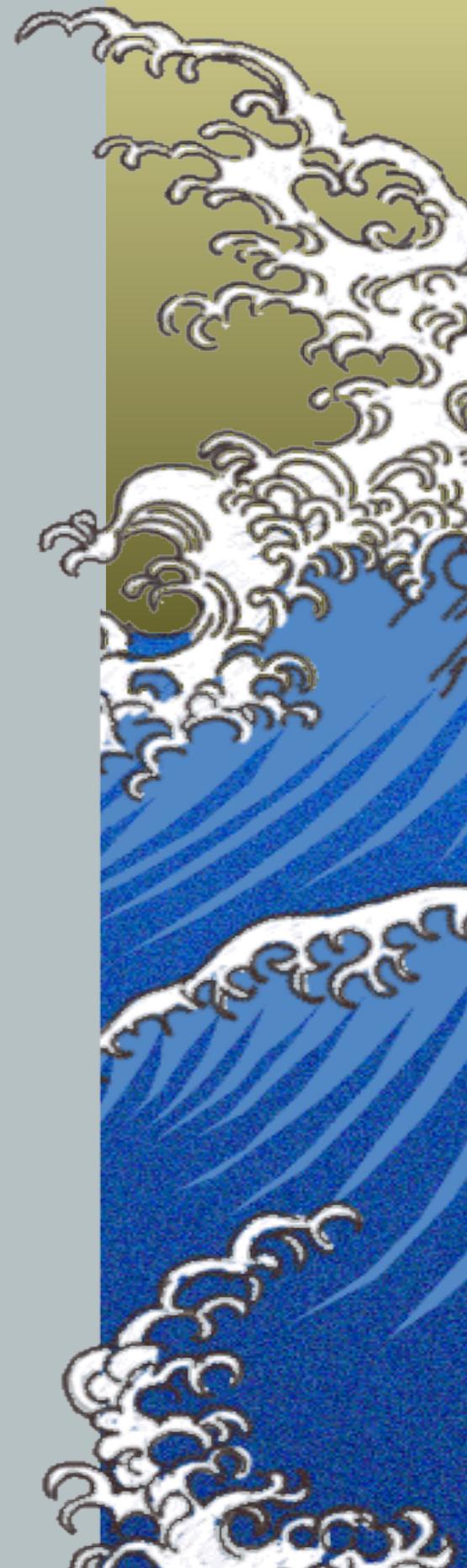
Contractus reales innominati

• *Do UT DES*

• *Do UT FACIAS*

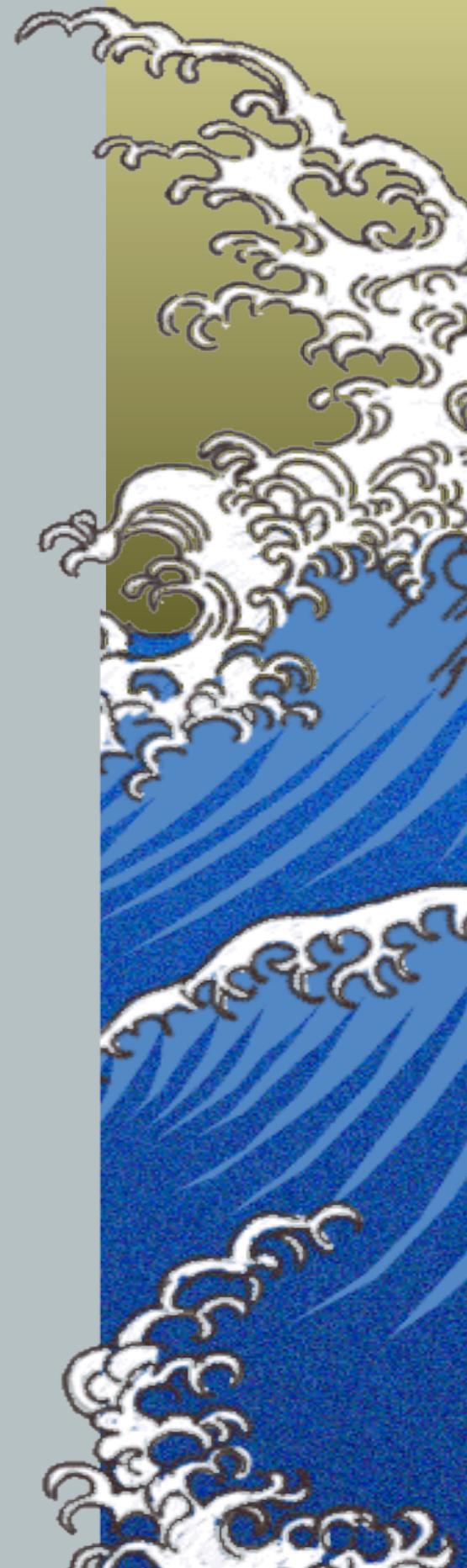
• *FACIO UT DES*

• *FACIO UT FACIAS*



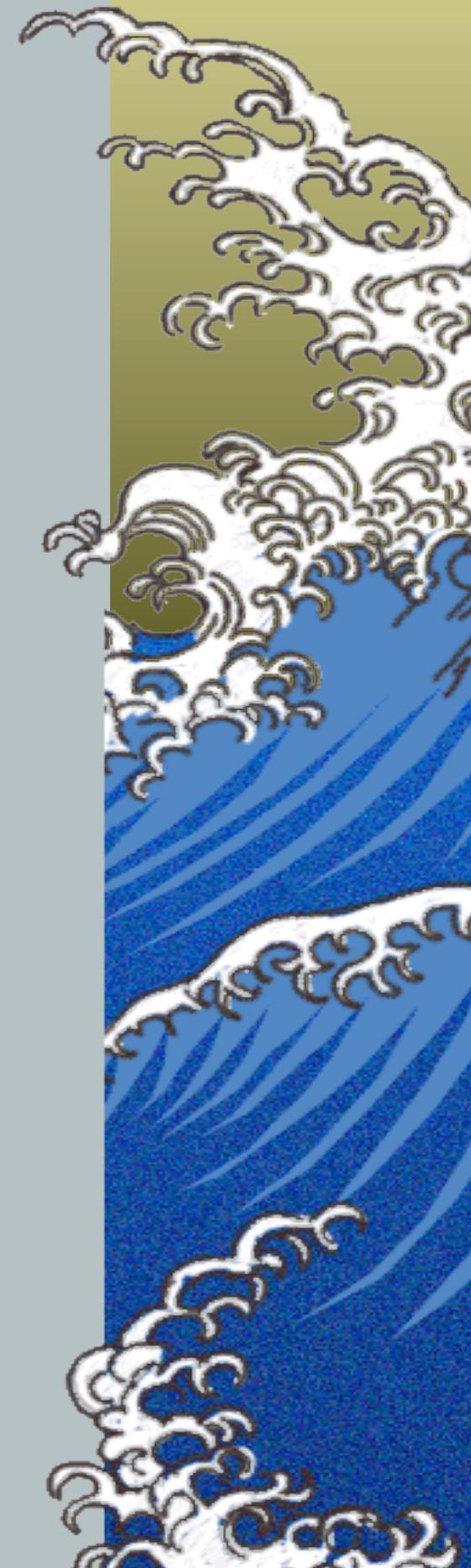
Contractus reales innominati

- *Examples:*
 - *aestimatum,*
 - *permutatio,*
 - *transactio,*
 - *donatio with order*



Actio praescriptis verbis

- D. 19.5.20 Ulpianus, On the Edict, Book XXXII.
- It is asked by Labeo, "If I give you horses that I have for sale to be tried, under the condition that you will return them within three days if they do not please you, and you, being a performer in the circus, ride said horses and win the prize, and then refuse to buy them; can an action on sale be brought against you?" I think the better opinion is that an action should be brought for the construction of the contract, for it was agreed upon between us that you should take said horses for the purpose of trying them gratuitously, and not that you should enter them in a race.



Actio praescriptis verbis

- D.18.1.50, Ulpianus, On the Edict, Book XI.
- Labeo writes that if you sell me a library on condition that the Campanian Decurions will sell me a site on which I can build and, I am to be blamed that I have not built in Campania, there is no doubt that an action de praescriptis verbis (on construction of a contract) can be brought to force me to comply. I think that an action on sale can also be brought, just as if the condition had been fulfilled, since the purchaser is responsible for its not having been done.



Pacta

- D. 2.14.7.7 (Ulpianus, on the Edict, book 4):
The praetor announces: “I shall protect pacts agreed upon, which have not been entered into maliciously or contrary to the laws, plebiscites, Decrees of the Senate, or Edicts of the Emperors, where no fraud appears in any of them.”



Pacta

- *Pacts at negotia bonae fidei*
- *Pacts pacta at negotia stricti iuris*
 - *Pactum de non petendo*
 - *Exceptio pacti/exceptio doli*



Exceptio pacti conventi/doli

Caius Aquilius iudex esto.

Si paret Numerium Negidium Aulo Agerio sestertium decem milia dare oportere qua de re agitur,

- *si inter Aulum Agerium non convenit, ne ea pecunia peteretur.*
- *or: si in ea re nihili dolo malo Aulii Agerii factum sit neque fiat,*

Caius Aquilius iudex Numerium Negidium Aulo Agerio sestertium decem milia condemnat; si non paret absolvito.



Pacta

- *Constitutum debiti proprii/alieni*
- *Receptum arbitrii*
- *Receptum argentarii*
- *Recepta nautarum cauponarum et stabulatorium*



Undue dowry

- D. 12.4.7.pr Julianus, Digest, Book XVI. Someone who thought that he owed a certain sum of money to a woman promised her betrothed, at her request, to pay it to him as dowry, and did so; and afterwards the marriage did not take place. The question arose whether the party who paid the money could recover it, or whether the woman could do so? Nerva and Atilicinus answered that since the party thought that he owed the money, and could have defended himself by an exception based on fraudulent intent, he himself could bring suit; but if he was aware that he did not owe the woman anything, and made the promise, the woman would have the right of action because the money would belong to her. If, however, he had been actually her debtor, and had paid the money before marriage, and the marriage did not take place; he can bring an action to recover the money, and no other right of the woman to payment of the debt would remain than that the debtor could be compelled to assign to her his right of action for recovery, and would be subject to no further liability.

