

Book IV.  
Title V.

Concerning the action for money not owing (i.e. paid by mistake).  
(De conditione indebiti.)

Bas. 24.1.18; D. 12.6.

4.5.1. Emperors Severus and Antoninus to Mucianus.

There is no doubt that money paid by mistake, but not pursuant to an order of court, may be recovered by condition. If you can prove, therefore, that your father, whose heir you are, paid his creditor more than was due, you can recover it. But you ask in vain that interest on the money be paid;<sup>1</sup> for in such an action only the amount paid but not owing may be recovered.

Promulgated July 30 (213).

4.5.2. The same Emperors to Secundina.

If, without any compromise, you were delegated to promise money not owing, to another creditor, you have condition against the person who delegated you.<sup>2</sup>

Promulgated July 30 (213).

4.5.3. Emperors Diocletian and Maximian and the Caesars to Pomphilus.

Since money paid by mistake may be recovered, so much more is an action of condition available to recover a writing in which money is promised which is not owing, or the defense of fraud may be set up against the party suing on it.

Subscribed at Byzantium April 3 (293).

4.5.4. The same Emperors and the Caesars to Heraclius.

The law is certain that the amount, increased through a denial in a suit (by a penalty imposed) cannot be recovered by one not knowing that the money paid (so far as the original claim was concerned) was not owing. And if a due bill for a debt not owing is given on the same ground, condition does not lie.

Subscribed at Byzantium April 9 (293).

Note.

The Roman law, to discourage litigation, penalized a defendant, often in double the amount due, in certain cases, if he denied liability in a suit, but where the plaintiff proved his case. That was true, for instance, where he denied liability under the Aquilian law (C. 3.5), or liability for a legacy or trust left to a church or other holy place (Inst. 3.27.7), or liability on a due bill (Nov. 18, cc. 8 and 9; see note C. 8.13. Even though there was in fact no liability in such cases, yet if payment was made, no recovery could be had on the plea that the money not owing had been paid. See Lange, Causale Element 79. He thinks that this rescript and C. 6.50.19 indicates that originally no debt not owing, but paid, could be recovered.

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<sup>1</sup> [Blume] See C. 4.7.4.

<sup>2</sup> [Blume] I.e., he undertook to become substitute debtor. For “delegation,” which involved such substitution, see C. 8.41.

4.5.5. The same Emperors and the Caesars to Attalus.

The law is not uncertain that if you were emancipated by your father and did not succeed to your father's inheritance within the time fixed by the praetorian law, the amount which you afterwards paid by mistake, thinking that you were your father's successor, you have a right to recover it by condiction.

Subscribed April 18 (293).

Note.

Emancipated children were, at the peril of total loss, required to make claim to an inheritance within a definite time. That was not done in this case. So the debt aid by the son was not owing by him, and he was entitled to have it returned. C. 8.18.2. Compare C. 3.31.5.

4.5.6. The same Emperors and the Caesars to Mnasea.

If you, in ignorance of the facts, paid money for another which was not owing, and this is proven to the rector of the province, he will see to it that it is restored to the person in whose name the money was paid, in a suit by the latter before the rector.

Subscribed August 8 (293).

4.5.7. The same Emperors and the Caesars to Dionysia.

The law is clear that a trust or legacy paid under a mistake of fact may be recovered.<sup>3</sup>

Subscribed September 9 (293).

4.5.8. The same Emperors and the Caesars to Ziparus.

Whoever makes a payment of a person who falsely claims to be agent of the former's creditor, may bring an action to recover the amount, but not an action to be released from the obligation.

Subscribed October 18 (294).

4.5.9. The same Emperors and the Caesars--

If a person pays money with knowledge that it is not owing, he cannot recover it. If, moreover, the property is sold by another without authority, and the owner pays money to the purchaser in satisfaction of eviction from the property or because of some preceding fault, he cannot pretend that he paid it by mistake, but he thereby shows that he ratified the same and that he paid his own debt.

Subscribed at Nicomedia December 2 (294).

4.5.10. Emperor Justinian to Julianus, Praetorian Prefect.

Where a person promised to give either a slave of a certain name, or a quantity of gold or some other property, and while he could have been released from his obligation, by doing one of these things, he, through an error, did both, it was doubted which he could recover, the slave or the money, and whether the promise of the stipulation or the promisor had the right of election herein.

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<sup>3</sup> [Blume] Legacies to a church or other holy place excepted—note law 4 of this title. (Blume lined out this note and the reference to it at the end of the law, but then erased the line out in the note itself.)

1. And Ulpian gives the right of election to the recipient of both things, holding that he might return which he pleased, referring as authority to Marcellus as well as Celsus. But Papinian gives the election to the party who gave, inasmuch as he had the option which to give in the first place, and he cites in support of this opinion a witness of the highest standing, namely Salvius Julianus, a man of the greatest authority, the compiler of the praetorian edict.

2. In deciding this point, we side with Julianus and Papinian, so that the party who had the option of giving, has also the election of return.

Given at Constantinople August 1 (530).

4.5.11. The same Emperor to Julianus, Praetorian Prefect.

As to the doubt of those who with a wavering mind paid money not in fact owing, a strife arose among the juriconsults whether they could or could not recover what they paid in this doubtful frame of mind. 1. In deciding this point, we ordain that persons who pay money or give other property not in fact owing when they are in such doubtful state of mind, shall not be denied the right of recovery and no presumption of compromise shall arise against them, unless this is specially proven by the other party.

Given at Constantinople October 1 (530).