

Book IV.  
Title VI.

Concerning condiction on the ground of what was given (the ground, or purpose, for which it was given, having failed).  
(De condicione ob causam datorum.)

Bas. 24.1.29; D. 12.4.

Headnote.

If something was given for a certain reason, or for a purpose, to be carried out by another, and the reason or purpose failed, what was given could, with some exceptions, be recovered by condiction. Thus if something was given or done by one with the expectation of another giving or doing something else, or if dowry was given with the view of a marriage, which did not take place, of a gift was made, subject to a limitation or duty (C. 8.54), and the duty was not performed, this rule applied. See. C. 4.64. The rule did not apply to regularly recognized contracts, such as sale.

4.6.1. Emperor Antoninus to Callisthenes.

As to the money which you say you received as dowry and concerning which a pact was made, which is customary when a marriage is legally contracted: If the law in any manner prevents the marriage to stand, there is no action concerning the dowry as such, and you should, therefore, under the law of condiction, restore the money which you received on that account, and the pact should be considered as not having been made at all.

Promulgated July 27 (215).

Note.

For dowry see C. 5.3 headnote, and C. 5.12. If there was no marriage, there was, properly, no dowry, and it could not be recovered as such. But the consideration (purpose) having failed, condiction lay.

4.6.2. Emperor Alexander to Asclepiades.

If, as you say, your father gave your sister land and other property which you mention, subject to the duty that she should pay the creditors and that if the duty were not carried out, the gift should fail, then if she has not acted in this matter in good faith, it is not unjust that you, who have succeeded your father as heir, should have the right of *condictio* against her to recover the things given her.

Promulgated November 18 (227).

Note.

Instead of the action for the return of the property (*condictio*), there was the right to elect another remedy, namely to make the party receiving the gift pay what was promised by *praescriptis verbis* action.

4.6.3. Emperors Valerian and Gallien to Aurelius and Alexander.

A gift made to you subject to the limitation that neither of you should have power of alienating your individual proportion, has the effect that neither of you must alienate your ownership in any manner, of if the limitation is not complied with, a condiction arises in favor of the donor or his heirs.

Promulgated April 1 (257).

Note.

If the property was alienated contrary to the prohibition, the alienation was not void. Only a personal action (a *condiction*) lay against the alienator. See C. 4.54; C. 3.32.

4.6.4. The same Emperors and Caesar Valerian to Aemeliana.

If, when you in fact received only a small amount, you gave a due bill that you had received a much larger sum for the reason that your opponent in turn promised to act as your counsel, and you say that the promise was not performed, then you can by *condiction* be released from an obligation which you agreed to pay for hoped-for counsel, but not received.

Promulgated April 27 (259).

Note.

See also C. 2.6.3; C. 5.3.1.

4.6.5. Emperors Diocletian and Maximian to Martial.

If you made a soldier your procurator for a business transaction, when this is forbidden by law, and you paid him money on that account, the proper judge will take care that what you paid for a purpose, is repaid when such purpose failed.

Promulgated September 22 (290).

Note.

See C. 2.12.7 as to soldier acting as agent.

4.6.6. The same Emperors and the Caesars to Curio and Plotio.

Since you say that your father gave a female slave to the person against whom you direct your petition, it makes a great deal of difference whether he gave her with the intention of making him a gift or in order that his daughter, whom he (erroneously) thought to be a slave, might be manumitted; for a completed gift cannot be revoked; but if the reason (consideration) for giving failed, the right of recovery exists.

Subscribed May 14 (293).

Note.

Bas. 24.1.34, in explaining this law says: "Someone, thinking that his daughter was the slave of Peter, when (in fact) she was free, gave (another) female slave to Peter, so that he might manumit his daughter. When he learned that his daughter was free, he supplicated the emperor that he might revoke the gift which he had made to the man whom he had considered as the owner of his daughter." A similar principle is stated in D. 12.4.3.5.

4.6.7. The same Emperors and the Caesars to Geranticus.

If you added no condition for the return of the money when you made a gift to the wife of the man whom you thereby tried to induce to travel with you, the gift remains in force, since the law discourages the inconstancy of those who are desirous of revoking a completed gift.<sup>1</sup>

Subscribed August 26 (293).

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<sup>1</sup> [Blume] See C. 2.4.25; C. 2.4.34.

The Bas. 24.1.35, in explaining this law, says: “When someone wanted another to travel with him, in order to induce him to do so, made a gift to his wife without stating the reason (consideration) therefor. Such other did not want to travel with him, and he thereupon supplicated the emperor to give him the right of a personal action to recover the gift. [Blume lined out this note but appears to have erased his line-out.]

#### 4.6.8. The same Emperors and the Caesars to Flavianus.

The rule of law is that a condition attached to a gift which is not impossible, and the receiver of the gift has failed to comply with the condition, gives rise to a *condictio*. Hence, when you gave property to your betrothed as a gift, upon a certain condition, and she, though able, failed to comply with it, you are not forbidden, if you wish to do so, to sue her heirs to recover what you had given.

Subscribed February 11 (294).

#### Note.

Generally speaking, when something was given for a certain purpose, and that purpose failed, *condictio* lay, whether the purpose was possible of fulfillment or not. That was true in the case of a gift, if a duty enjoined on the donee was the main purpose. D. 35.5.2.7. But if, in case of a gift, such duty was secondary, and it could not be carried out without fault of the donee, the gift could not be recovered. D. 39.5.2; C. 6.45.1. The tendency was to carry this rule over to other cases. Laws 10 and 11 h.t.

#### 4.6.9. The same Emperors and the Caesars to Bibulus.

If you, a free person, gave something in order that your daughters might be manumitted, and this is not done, you have the right of *condictio* to have it restored. Of course, if a slave has given something from his own special property (*peculium*) to his master, he can have no right of action against him (to recover what was given), but a master, who has once accepted money for manumission, out of favor for freedom, will be exhorted by the rector of the province, when an appeal is made to him, reserving all honor due (the master from the slave) to keep his word.<sup>2</sup>

#### 4.6.10. The same Emperors and the Caesars to Cononiana.

It is certain that when money was given by you, then although the purpose for which it was given has failed, not by the fault of the receiver but fortuitously, it cannot be recovered.

Subscribed at Nicomedia December 3 (294).

#### Note.

The contrary is held in D. 12.4.16, and that must naturally have been the rule in cases where no gift was intended. So Pernice, 3 *Labeo* 303, holds the rescript was interpolated by Justinian to state the contrary of its original. Koschembahr-Lyskowski, 1 *Condictio* 195, holds that whether the thing given was returnable or not depended on whether it was just and in accordance with good faith in the particular case. See also Buckland, *Textbook* 541 n. 12.

#### 4.6.11. The Same Emperors and the Caesars to Stratonica.

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<sup>2</sup> [Blume] See C. 4.57.4 and C. 7.16.8.

If money is given for the purpose of receiving the assistance of advocates, and it is shown that, through the fault of those who received it, the promised assistance was not given, such money may be recovered.

Subscribed December 16 (294).

Note.

If the assistance was not given, but without fault of the advocate, then, due to the nature of the employment, recovery of the money paid could not be had. D. 50.13.1.13; law 10 h.t.