

Book IV.
Title XXIII.

Concerning a gratuitous loan.
(De commodato.)

Headnote.

A commodatum was a gratuitous loan of property for use for a limited time, and frequently for a limited purpose, and the borrower was bound to restore the identical property lent. Inst. 3.14.2. Deliberate misuse thereof lay the borrower liable to an action for conversion. Gaius. 3.197. Loans of this kind were apparently frequent, and such transactions created a real contract, that is a contract in rem, as of the time when the property was delivered. The return thereof was probably not enforceable until toward the end of the republic, when the praetor first gave an action on the case (in factum), but later an equitable, good-faith action. Gaius. 4.47. The latter action was one on the contract. At times the gratuitous borrower was entitled to an action—e.g. when he incurred extraordinary expenses, as for example on a sale. Paul Sent. 2.4.1. See also D. 13.6.18.3; D. 13.6.22.

4.23.1. Emperors Diocletian and Maximian and the Caesars to Sisola.

Things which are carried away by force are not customarily charged up to the parties to whom the property was gratuitously loaned. But since the person who asked you to loan him an ox is stated to have assumed, in contemplation of a hostile incursion, the risk of loss and future damage, the president of the province will, if you prove that he promised to indemnify you, compel him to carry out his agreement.
Given May 27 (290 or 293).

Note.

A borrower for use was not ordinarily responsible for unavoidable casualty, but he could assume the risk by contract. He was liable for intentional wrong and negligence. He has to exercise “exact” care. C. 4.34.1.

4.23.2. The same Emperors and the Caesars to Auluzanus.

Since good faith compels a man to make restitution of a female slave, whom he received for temporary service, it follows that you should prove to the president of the province that your father-in-law delivered a female slave for that purpose, so that the man, against whom you direct your petition may be compelled to keep his word.
Subscribed November 4 (293).

4.23.3. The same Emperors and the Caesars to Sotera.

If you gratuitously loaned a man property to pledge for his debt, you may, after the debt has been paid, bring an action on the gratuitous loan (commodati) even against his heirs, for the purpose of having it restored.
Given at Sirmium April 11 (294).

4.23.4. The same Emperors and the Caesars to Faustina.

The restitution of property gratuitously loaned cannot, with the approval of the law, be refused under the pretext of a debt to the man who has the loan.¹
Given November 20 (294).

¹ [Blume] This rule held true also in case of a deposit. C. 4.34.11.