

Book IV.
Title VII.

Concerning condiction on account of an immoral consideration.
(De condicione ob turpam causam.)

4.7.1. Emperor Antoninus to Ingenuus.

If you have been sued on your due bill, you must prove to the judge who tries the case that you did not receive any money, but that the due bill was given for a dishonorable purpose prohibited by law; and if you do this, you will be released. Without day or consul.

4.7.2. The same Emperor to Longinus.

When you acknowledge that you gave a house to your opponent for a dishonorable purpose, contrary to the spirit of our age, you ask for restitution thereof in vain, since the situation of the possessor is the better where the situation is equal. Promulgated November 17 (215).

Note.

Restitution was not allowed if both parties were guilty of immoral conduct. It was allowed only if the giver was not. Law 4 h.t. D. 12.5.4.

4.7.3. Emperors Diocletian and Maximian to Dizon, a soldier.

Whatever appeared by proof as clear as day before a competent judge to have been given by you to the person of whom you complain, so that you might not become a new recruit, may, by the help of the judge, be recovered by you. And, mindful of public punishment, he will not, after the restitution of the money, permit the crime of extortion to go unpunished.

Promulgated July 30 (290).

Note.

A tiro was a new recruit in the army. The menial and inferior work in the army was assigned to such recruits. The regular soldiers were exempt therefrom. In the foregoing case, the commander in the army had assigned a regular soldier to these menial duties, and the soldier, in order to evade them, gave a gift to the commander. The soldier was not guilty of an immoral conduct, and hence could recover.

4.7.4. The same Emperors and the Caesars to Rufinus.

Whenever the object of the receiver, but not of the giver, is found to be dishonorable, then, although the object is attained, the amount given—without interest, however—may be recovered.

Subscribed at Sirmium January 7 (293).

4.7.5. The same Emperors and the Caesars to Bithus.

You say that you bartered our wife. From this you know that your petition also contains an acknowledgment of pandering and that a sum promised in a due bill for dishonorable purposes cannot be collected. For, although money paid when both parties are guilty of moral turpitude cannot be recovered, still the law teaches that no action lies on a stipulation which was made in violation of good morals.

Subscribed May 10 (294).

4.7.6. The same Emperors and the Caesars to Eutychia.

A man who receives money in order to restore what he has stolen must, since only he is guilty of moral turpitude, repay it, if sued by condiction.
Given May 18 (294).

4.7.7. The same Emperors and the Caesars to Zenodia.

A person who received money to restore cattle which he drive off, must restore both the money and the property which he received through his crime, although it perishes through fortuitous circumstance, since he is continually in default in such case.
Given at Nicomedia November 27 (294).

Note.

A person who had another's property and was in default in delivering it had to bear the risk of damage thereto or loss thereof. C. 4.48.4 note. A thief was considered as always in default, and the property was held by him at his risk. Law 7 h.t. C. 4.8.2; C. 6.2.9. The same rule applied when property was taken by force. C. 2.19.1.