

liberto solverint, liberari eos; cum alioquin stricta juris ratione non possent liberari, quia alii solvissent quam cui solvere debuerint²⁸.

§ 11. Mandatum non suscipere cuilibet liberum est; susceptum autem²⁹ consummandum est, aut quam primum renuntiandum, ut per semetipsum aut per aliud eamdem rem mandator exequatur. Nam nisi ita renuntiatur ut integra causa mandatori reservetur eamdem rem explicandi, nihilominus mandati actio³⁰ locum habet: nisi justa causa³¹ intercessit, aut non renuntiandi, aut intempestive renuntiandi.

§ 12. Mandatum et in diem³² differi, et sub conditione fieri potest. — § 13. In summa sciendum est, mandatum nisi³³ gratuitum sit, in aliena formam negotii cadere; nam mercede constituta, incipit locatio et conductio esse. Et, ut generaliter dixerimus, quibus casibus sine³⁴ mercede suspecto officio mandati aut depositi contrahitur negotium, iis casibus interveniente mercede locatio et conductio contrahi intelligitur. Et ideo si fulloni polienda curandave vestimenta dederit, aut sarcinatores sarcina, nulla mercede constituta neque promissa, mandati competit actio³⁵.

TIT. XXVII.

DE OBLIGATIONIBUS QUASI EX CONTRACTU.

Post genera contractuum enumerata, dispiciamus etiam de iis obligationibus qua non proprie quidem ex contractu nasci intelliguntur; sed tamen quia non ex maleficio substantiam capiunt, quasi ex contractu nasci videntur.

§ 1. Igitur cum quis¹ absens negotia gesserit, ultra citroque inter eos nascuntur actiones que appellantur negotiorum gestorum. Sed domino quidem rei gesta adversus eum qui gessit, directa² competit actio; negotiorum autem gestori, contraria. Quas ex nulla contractu proprie nasci manifestum est; quippe ita nascuntur istae actiones, si sine mandato quisque alienis negotiis gerendis se obtulerit: ex qua causa ii quorun negotia gesta fuerint, etiam ignorantes obligantur. Idque utilitatis³ causa receptum est, ne absentibus qui subita festinatione coacti, nulli demandata negotiorum suorum administratione, peregrinatio essent, desererentur negotia: que sane nemo curaturus esset, si de eo quod quis impeditisset, nullam habitus esset actionem. Sicut autem si qui utiliter gesserit negotia, habet obligatum dominum negotiorum, ita et contra iste quoque tenetur ut administrationis rationem reddat. Quo casu ad exactissimam quisque diligentiam compellitur reddere rationem; nec sufficit talem diligentiam adhibere qualcum suis rebus adhibere soleret, si modo alius diligentior commodius administratus esset negotia. — § 2. Tutores quoque qui tutela judicio tenentur, non⁴ proprie ex contractu obligati intelliguntur (nullum enim negotio inter tutorem et pupillum contrahitur); sed quia sano non ex maleficio tenentur, quasi ex contractu teneri videntur. Et hoc autem casu mutue sunt actiones: non tantum enim pupillus cum tutor habet tutelam actionem, sed ex contrario tutor cum pupillo habet contraria⁵ tutelam, si vel impenderit aliquid in rem pupilli, vel pro⁶ eo fuerit obligatus, aut rem suam creditoribus eius obligaverit. — § 3. Item si inter aliquos communis sit res sine⁷ societate, veluti quod pariter eis legata donata esset; et alter eorum alteri ideo teneatur communis dividendo judicio, quod solus fructus ex ea re percepit, aut quod socius eius solus in eam rem necessarias impensis fecerit, non intelligitur proprie ex contractu obligatus, quippe nihil inter se contrarerunt: sed quia non ex maleficio tenentur, quasi ex contractu teneri videntur.

§ 4. Idem juris est de eo qui⁸ coheredi familie ericundae judicio ex his causis obligatus est. — § 5. Heres⁹ quoque legatorum nomine non proprius ex contractu obligatus intelligitur (neque¹⁰ enim cum herede, neque cum defuncto ullum negotium legatarus gessisse proprie dici potest); et tamen quia ex maleficio non est obligatus heres, quasi ex¹¹ contractu debere intelligitur. — § 6. Item¹² ei cui quis per errorem non debitum solvit, quasi ex contractu debere videtur. Adeo enim non intelligentur proprie ex contractu obligatus, ut si certiore rationem sequamur, magis (ut supra diximus) ex distractu, quam ex contractu possit dici obli-

28. Inst. Gaii, III, 160. — 29. L. 2, 1; L. 22, 2 ult.; L. 27, 2, 2. D. b. t.; L. 17, 2, 3. D. commodatio. — 30. L. 22, in fin. D. b. t. — 31. L. 25, 24, 25. D. eod. — 32. L. 1, 2, 5. D. eod. — 33. d. L. 1, 2 ult. — 34. L. 22, D. de praser. verb. — 35. Inst. Gaii, III, 162.

Tir. XXVII. — 1. L. 5, in pr. D. de oblig. et act. — 2. L. 2, D. de negot. gest. — 3. L. 1, D. eod. — 4. L. 5, in pr. D. de oblig. et act. — 5. L. 2, C. de oblig. et act. — 6. L. 5, 1, D. de oblig. et act. — 7. L. 1, C. de rei vind. — 8. Inst. Gaii, III, 164. — 9. Id. III, 165. — 10. L. 45, D. de acquir. rer. dom. — 11. Inst. Gaii, III, 167. — 12. L. ult. C. per quis person. nob. adquir. — 13. Inst. Gaii, III, 167.

Tir. XXIX. — 1. Lib. 46, D. 5, 4; Lib. 8, C. 45, 44. — 2. L. 107, D. de solution. — 3. L. 17, C. eod. — 4. L. 104, D. de verb. oblig. — 5. L. 56, 64, 66; D. L. 5; L. 17, C. de solu. pro socio. — 8. 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