Condictio ob rem

Tzu-Chiang Chen*

Abstract

There was a limited number of actionable contracts in Roman law. In the case of contracts which were in Roman law not binding, parties were left to voluntary performance. If the counter-performance remained outstanding, in Rome the condictio ob rem was available. In spite of the missing of the historic background, this kind of condictio can still be found in the BGB. Today, this condictio has a narrow field of application. It relates to situations where the claimant has provided performance to the defendant not in exchange for counter-performance of another obligation, but for another purpose, and where both parties have agreed that this purpose was the reason for the performance. Some academics have taken the view that condictio ob rem should apply in cases where the parties have performed in anticipation of a contract which is never concluded. A party may likewise have performed under a contract which it knows to be void for lack of form, expecting this lack to be healed by complete performance. The Civil Code of Republic China enacted in the year 1929 omitted purposely regulations concerning condictio ob rem. In spite of that fact, it is widely recognized by legal doctrines and judgements of the Supreme Court. Academics and the Supreme Court have taken the view that a performance which has failed to produce the result at which the transaction had aimed can be recovered. Close inspection of the relevant cases reveals that the cases which courts seek to apply the rules of condictio ob rem are cases of contract law, rather than of unjust enrichment. If we allow restitution whenever the result intended to be achieved by those efforts in accordance with the contents of the legal transaction does not occur, the rules of remedies of contract will be in a state

---

* Professor of Law, College of Law, National Taiwan University.
E-mail: tcchen@ntu.edu.tw

of chaos and the law of unjust enrichment based on performance could be purely and simply a rule of equity.

Keywords: condictio causa data causa non secuta, enrichment by transfer, prepaid cases, cases of stimulation from other party, cases of failure of secondary aims, aim of contract