

**D. 4.3.1 (Ulpianus libro 11 ad edictum)** pr. Hoc edicto praetor adversus varios et dolosos, qui aliis offuerunt calliditate quadam, subvenit, ne vel illis malitia sua sit lucrosa vel istis simplicitas damnosa. 1. Verba autem edicti talia sunt: "Quae dolo malo facta esse dicentur, si de his rebus alia actio non erit et iusta causa esse videbitur, iudicium dabo."

Pr. By this edict the praetor affords relief against shifty and deceitful persons who by a certain cunning have harmed others, so as to prevent either their wickedness benefiting the former or their simplicity harming the latter. 1. And in fact these are the words of the edict: "Where something is alleged to have been done with a malicious or fraudulent intent and there is no other relevant action and there seems to be a reasonable ground, I will grant an action." (Alan Watson, 'The Digest of Justinian', University of Pennsylvania Press, 1985)

**D. 3.5.3 (Ulpianus libro decimo ad edictum)** pr. Ait praetor: "Si quis negotia alterius, sive quis negotia, quae cuiusque cum is moritur fuerint, gesserit: iudicium eo nomine dabo. "

The praetor says: "If anyone has managed the affairs of another or has administered what were his affairs at the time of his death, I will grant a trial on this account."

**D. 45.1.38. 17 (Ulpianus libro 49 ad Sabinum)** Alteri stipulari nemo potest, praeterquam si servus domino, filius patri stipuletur: inventae sunt enim huiusmodi obligationes ad hoc, ut unusquisque sibi adquirat quod sua interest: ceterum ut alii detur, nihil interest mea. Plane si velim hoc facere, poenam stipulari conveniet, ut, si ita factum non sit, ut comprehensum est, committetur stipulatio etiam ei, cuius nihil interest: poenam enim cum stipulatur quis, non illud inspicitur, quid intersit, sed quae sit quantitas quaeque condicio stipulationis.

No one can stipulate on behalf of another, except where a slave stipulates for his master, a son for his father; for obligations of this kind were devised in order that each man should acquire for himself what is of benefit to him; but it is of no benefit to me that something should be given to another. Clearly, if I wish to do this, it is right to stipulate a penalty, so that, if things are not done just as was specified, the stipulation should apply even to the man who does not benefit; for when someone stipulates a penalty, the question under consideration is not what benefit there may be, but the extent and condition of the stipulation.

**D. 6.1.5.1 (Ulpianus libro 16 ad edictum)** Idem scribit, si ex melle meo, vino tuo factum sit mulsum, quosdam existimasse id quoque communicari: sed puto verius, ut et ipse significat, eius potius esse qui fecit, quoniam suam speciem pristinam non continet. Sed si plumbum cum argento mixtum sit, quia deduci possit, nec communicabitur nec communi dividendo agetur, quia separari potest: agetur autem in rem actio. Sed si deduci, inquit, non possit, ut puta si aes et aurum mixtum

fuerit, pro parte esse vindicandum: nec quaquam erit dicendum, quod in mulso dictum est, quia utraque materia etsi confusa manet tamen.

Again, he writes : “If mead is made from may honey and your wine, some jurists have held that it also is common property.” I consider, however, as he himself suggests, that it belongs rather to the maker, since it does not retain its previous character. But if lead is mixed with silver, as it can be detached, the mixture will not become common, and because separation is possible, there will be non action for dividing common property; an action in rem may, however, be brought. If detachment is not possible, for example, if bronze and gold have been mixed, he states that a vindicatio should be brought for a portion. What was said in regard to mead will not apply here since, although they are joined together, each substance still retains its character.

**D. 6.1.23.5. (Paulus libro 21 ad edictum)** Item quaecumque aliis iuncta sive adiecta accessionis loco cedunt, ea quamdiu cohaerent dominus vindicare non potest, sed ad exhibendum agere potest, ut separentur et tunc vindicentur: scilicet excepto eo, quod Cassius de ferruminatione scribit. Dicit enim, si statuæ suæ ferruminatione iunctum brachium sit, unitate maioris partis consumi et quod semel alienum factum sit, etiamsi inde abruptum sit, redire ad priorem dominum non posse. Non idem in eo quod adplumbatum sit, quia ferruminatione per eandem materiam facit confusionem, plumbatura non idem efficit. Ideoque in omnibus his casibus, in quibus neque ad exhibendum neque in rem locum habet, in factum actio necessaria est. At in his corporibus, quæ ex distantibus corporibus essent, constat singulas partes retinere suam propriam speciem, ut singuli homines singulæ oves: ideoque posse me gregem vindicare, quamvis aries tuus sit immixtus, sed et te arietem vindicare posse. Quod non idem in cohaerentibus corporibus eveniret: nam si statuæ meæ brachium alienæ statuæ addideris, non posse dici brachium tuum esse, quia tota statuæ uno spiritu continetur.

Where a thing has been joined or attached to another thing and so merges with that other by way of accession, the former cannot be vindicated by its owner, so long as the two are stuck together. He can, however, sue by the action for production to have it detached and then vindicate it. This is subject to the exception mentioned by Cassius in regard to welding. He says that if an arm of a statue has been joined to the rest of the statue by welding, it is merged in the unified whole of the larger part, and once it has become another's property cannot, even though later broken off, revert to his former owner. It is not the same with what has been soldered with lead, because welding effects fusion of two things made of the same material, whereas soldering has not that effect. And so, in all these cases in which there are grounds neither for an action for production nor for an action *in rem*, an *actio in factum* is necessary. But in the case of things which consist in a number of individual objects, it is accepted that all of them retain their separate identities, as, say, individual men or individual sheep. Thus I can vindicate a flock of sheep, even though your ram is mixed in with them, and you can vindicate the ram. The situation is different where the parts of the whole are

stuck together; for if you fix an arm from someone else's statue on to my statue, it cannot be said that the arm is yours, because the complete statue constitutes a single whole.

**D. 2.13.1** (*Ulpianus libro quarto ad edictum*) pr. Qua quisque actione agere volet, eam edere debet: nam aequissimum videtur eum qui acturus est edere actionem, ut proinde sciat reus, utrum cedere an contendere ultra debeat, et, si contendendum putat, veniat instructus ad agendum cognita actione qua conveniatur. 1. Edere est etiam copiam describendi facere: vel in libello complecti et dare: vel dictare. Eum quoque edere Labeo ait, qui producat adversarium suum ad album et demonstret quod dictaturus est vel id dicendo, quo uti velit.

Pr. Where anyone wishes to bring an action, he should give notice; for it seems most fair that one who is about to bring an action should give notice so that the defendant accordingly may know whether he ought to admit the claim or contest it further and so that if he thinks it should be contested, he may come prepared for the suit, knowing the action by which he is sued. 1. To give notice includes providing a means for taking a copy, the drawing up and furnishing of a written statement or dictation. Labeo says that a person also gives notice if he brings his adversary to the tablets proclaiming the edict and points out the action he is about to dictate or declares the one which he intends to use.