

Condictio indebiti

Kort definisjon

Krav om tilbakeføring av mottatt betaling/oppfyllelse ved feilbetaling;
Betaling i villfarelse om pliktens eksistens eller omfang, eller for mye/lite

Hensyn

For: Korreksjonshensyn → materielt sett riktig oppgjør + Unngå tilfeldig fordel/ulempe
Mot: Oppgjørshensyn → mottakerens innrettelse + forutberegnelighet

1

Rettsfakta

- Anvendelse: "Feilbetaling"?
- Kjerneområdet: Betalt i villfarelse om pliktens eksistens/omfang
- Men: Intet "formelt condictio indebiti"-begrep, jf 01/1580; også hvis betalingen skyldes en kriminell handling
- Unntak: Betaling av foreldet gjeld kan ikke kreves tilbake
- Utgangspunkt: Tilbakebetalingsplikt?
- Tja, Bergsjøer → Nei (unt. tilleggsbetaling); Lilleholt → Ja.
- Vurderingstema: Konkret helhetsvurdering av hva som er mest "rimelig", 85/290 (Birgo)
- Motstående hensyn: Oppgjørshensynet VS korreksjonshensynet
- Momenter:
- Skyld på noen av sidene? Ond/god tro?
- Objektiv årsak: Forhold på betalers/mottakers side?
- Graden av betalingspress? (Jo mer press, jo mer rimelig med restitusjon)
- Tiden som har gått: Lang eller kort tid? (Jo lengre tid → ikke restitusjon)
- Betalingens art: Kontant/hensynet; Behov for innrettelse (ex for mye lønn)
- Mottakers konkrete innrettelse (Jo mer innrettelse → ikke restitusjon)
- Partenes stilling: Profesjonelle parter / forbruker
- Hvis tatt forbehold om tilbakebetaling ved feil → Ofte avgjørende

2

Rettsgrunnlag

1

Avtale

- Avtalefrihet: Partene kan alltid bli enige om endelig oppgjør eller tilbakebetaling

2

Lov

- Ikke konsekvent lovgivning. Reglene er i hovedsak ulovfestede

3

AOP?

- Jau!
- Dommer: Rt 1985 s. 290 (Birgo), Rt 1997 s. 1029 (M/S Marlin), Rt 2001 s. 1580 (Slåtto Husbygg), Rt 2010 s. 816 (Konsesjonsavgift), HR-2016-2491-A

3

Rettsvirkning

- ⇒ Tilbakebetalingsplikt
- Med eller uten renter?
- Hovedregel: Ansvarrente
- Unt: Skal en god del til hvis det først er rimelig med tilbakebetaling
- Hvis forbrukt: Berikelsesavleggelse?
- Antakelig ja (Indebitum betyr tross alt berikelse...)

Treatise On The Quasicontract Called Promutuum And On The Condictio Indebiti

Robert Joseph Pothier



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