

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 en 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 løn)
- 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?

- Jaui
- 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

Lauren Gardner



Treatise On The Quasicontract Called Promutuum And On The Conductio Indebiti:

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