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You Be the Judge II: Explorations in Jewish Civil Law

Lesson 6: The Do-Gooder

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- The C.C.L.C. makes the classical distinction between sources of obligations, namely:

  Article 983.

  « Obligations arise from contracts, **quasi-contracts**, offences, quasi offences, and from the operation of law solely. »

- This distinction no longer exists under the C.C.Q. as such, which makes the following distinction:

  Article 1372.

  « An obligation arises from a contract **or from any other act or fact** to which the effects of an obligation are attached by law. »

- Under the C.C.L.C. Quasi-Contracts were defined as:

  Article 1041.

  « A person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them. »

- While the C.C.Q. did not reproduce this article, the concept remains the same – however, instead of calling them **Quasi-Contracts** we now call them **Juridical Facts**.

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Juridical Acts vs. Juridical Facts

Juridical Act

- **Bilateral Act (i.e. Contract) :** where there is an agreement between a creditor and the debtor
- **Unilateral Act (i.e. Testament) :** where a party intends to produce legal effects

Juridical Fact

- Voluntary action by a party without the intention to create legal consequences, but where the law attaches such legal consequences for equitable purposes.

- In the C.C.Q. under the section entitled “Certain Other Sources of Obligations” we find:

1) Management of the Business of Another
   (art. 1482 to 1490 C.C.Q.)

2) Reception of a Thing Not Due
   (art. 1491 and 1492 C.C.Q.)

3) Unjust Enrichment
   (art. 1493 to 1496 C.C.Q.)

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Common Theme

All 3 recourses share the following elements:

- An enrichment (having your affairs properly managed, receiving money that doesn't belong to you, or avoiding a loss at the cost of someone else)
- An impoverishment of the person performing the activity
- No legal justification (no contract, no specific legal duty)
- No other remedy to rectify the economic imbalance created

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Management of the Business of Another

negotiorum gestio

- Definition:

> «1482. Management of the business of another exists where a person, the manager, **spontaneously and under no obligation** to act, **voluntarily** and **opportunely** undertakes to manage the business of another, the principal, **without his knowledge**, or with his knowledge if he was unable to appoint a mandatary or otherwise provide for it. »

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Conditions Precedent to Establish Management of the Business of Another

(5)

1. The Principal must not have knowledge of the management; otherwise if the Principal knows and does not intervene, it is considered a tacit mandate

2. The Manager must not be juridically obligated to act (i.e. contract, legal duty); otherwise the relationship will be governed by that specific regime [contract of mandate, enterprise, service, work]; this is also why a trustee, liquidator, tutor, or curator cannot qualify

3. The Manager must have the intention to manage for the benefit of another and not for himself personally; it is not appropriate if the intention is to manage for both his own benefit and someone else's, although there may be a claim for unjust enrichment

4. The Manager must have the intention of eventual being compensated; it is the fine line between altruism and selfishness; otherwise, the management could be considered as simple charity

5. The management must be undertaken at the appropriate time; the opportune moment is judged at the time that the action is performed, even if later the action is rendered useless

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Obligations of the Manager (4)

1. Inform the Principal as soon as possible of the management (art. 1483 C.C.Q.)
2. Continue the management until he can withdraw without any risk of loss (art. 1484 al. 1 C.C.Q.)
3. Act with prudence, diligence, honesty, and loyalty as a reasonable person would in a similar situation (art. 1484 al. 2, 1309, and 1310 C.C.Q.)
4. Render an account of the management (art. 1484 al. 2 and 1363 C.C.Q.)

Effects of the Management (Even if the desired result is not achieved)

- The Principal must reimburse the Manager all of his necessary and useful expenses; this includes any costs that, even if they were not essential, which benefited the Principal or preserved the item being managed; it is not necessary for the Principal to be enriched by the action
- The Principal must indemnify the Manager for any damages that he suffered which were not due to his own fault
- The Principal must honour and hold the Manager harmless from any agreements that the Manager entered into with third parties

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The Case of the Considerate Contractor: Case 1

- Contractor driving by a house → no juridical obligation to act
- Owners are in Florida and the neighbour has no way of reaching them → principal has no knowledge
- Gutters are in bad shape and the property will be damaged if not repaired before the winter → opportune moment
- Contractor hopes to be reimbursed when the owners come home → not simple charity
- Gives the owners the invoice when they come home in the spring → informs as soon as possible and renders an account

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Coopersmith vs. **Air Canada**

EYB 2009-161660 (C.Q.)

- Dr. Coopersmith is in business class with his wife on a flight from Montreal to Paris
- 3 passengers need medical assistance, Dr. Coopersmith helps 2 of them and another Dr. helps the 3rd person
- Dr. Coopersmith finishes with the 2 passengers and goes back to his seat to sleep
- He is woken up by a stewardess who begs him to help the 3rd passenger, who is suffering from a panic attack, because the other Dr. is going to inject valium and he is unable to show his credentials

- Dr. Coopersmith reluctantly agrees to help and he succeeds in calming the passenger down without any medication
- He goes back to his seat and is then is inundated with paperwork that Air Canada makes him fill out
- He is not able to sleep for the entire flight and he arrives in Paris tired for his vacation
- Dr. Coopersmith asks Air Canada for compensation and they offer him 15,000 Aeroplan points (his flight had cost him 150,000 points plus $600 in taxes)

- Dr. Coopersmith refuses and sues claiming Management of the Business of Another (art. 1482 C.C.Q.)
- Air Canada claims that he was just acting as a good Samaritan and they just wanted to give him a small token to show their appreciation

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The Judge decided:

- As a passenger, Dr. Coopersmith had a contractual relationship with Air Canada
- However, for the services rendered during the flight, there was no contractual relationship with Air Canada
- Dr. Coopersmith was acting for the benefit of Air Canada because they could have suffered a prejudice from

  (a) having an ill passenger that needed attention, and

  (b) that other passengers would be affected by the passengers panic

- There was no legal or ethical obligation to act because another physician was already on the scene
- By applying art. 1486 C.C.Q. the principal is entitled to:

(a) reimbursement of all necessary or useful expenses

Which the Court evaluates at $500 for medical services

(b) indemnification for any injury suffered

Which the Court evaluates at another $500 for inconvenience and loss of enjoyment of the flight

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Criticism as this Rule Applies to Good Samaritans

- Art. 2 of the Quebec Charter of Human Rights and freedoms states:

> « Every human being whose life is in peril has a right to assistance.
>
> Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason. »

- Does this case now stand for the principle that every time someone acts a good Samaritan that they can claim damages for trouble and inconvenience?
- Baudouin's answer:

  « Pour qu'il y ait gestion d'affaires, il faut aussi que le gérant ne soit pas spécifiquement obligé par la loi ou par jugement de s'occuper des affaires du géré. En revanche, le devoir général d'agir en personne prudente et diligente (art. 1457 C.c.Q.) ne fait pas obstacle à la gestion d'affaires. Il devrait en être ainsi même pour son application particulière au bon samaritain, qui prête secours à une personne dont la vie est en péril, pour les dépenses effectuées ou le préjudice (blessures, etc.) qu'il subit lui-même. »

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Garage Deschênes inc. vs. **Transport Baie-Comeau inc.**

REYB 2009-39280 (C.A.)

- The Respondent crashes its truck carrying a tractor into a Hydro-Quebec poll on the highway, it flips over, and the driver is hospitalized
- The Police call the Appellant, a towing company, to take care of the accident
- The Appellant does not speak to the owner of the Respondent company or the driver, as he was hospitalized
- The Appellant's employees spend the entire night clearing up the highway, controlling traffic, cutting the vehicles loose, and finally towing the vehicles to their lot and storing it

- The next day the Respondent sends an employee to take possession of the truck and the tractor
- The Appellant presents an invoice for almost $20,000 for the various services and refuses to remit the vehicles until they are paid, invoking the right of retention
- The Trial Judge qualified the relationship between the Appellant and the Respondent as the Management of the Business of Another because there was no contract between the two parties; it was the police that asked for their help – the Appellant and Respondent never communicated

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The Right of Retention

- Art. 1484 al. 2 C.C.Q.

  « The manager is in all other respects of the administration subject to the general obligations of an administrator of the property of another entrusted with simple administration, so far as they are not incompatible, having regard to the circumstances. »

- Art. 1369 C.C.Q.

  « An administrator is entitled to deduct from the sums he is required to remit anything the beneficiary or the trust patrimony owes him by reason of the administration.

  An administrator may retain the administered property until payment of what is owed to him. »

The Court decided:

- The reference in art. 1484 C.C.Q. refers only to the "**obligations** of an administrator of the property of another entrusted with simple administration" **only** but does not include the parts that deal with the **rights** of an administrator, such as the Right of Retention
- The reasonable cost for the services rendered was then evaluated at $7,500

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Payment, Subrogation, and Assignment of Claims

- Payment - Art. 1555 C.C.Q

  « Payment may be made by any person, even if he is a third person with respect to the obligation; the creditor may be put in default by the offer of a third person to perform the obligation in the name of the debtor, provided the offer is made for the benefit of the debtor and not merely to change creditors.

  A creditor may not be compelled to take payment from a third person, however, if he has an interest in having the obligation performed by the debtor personally. »

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- Subrogation

  Art. 1651 C.C.Q.

  « A person who pays in the place of a debtor may be subrogated to the rights of the creditor.

  He does not have more rights than the subrogating creditor. »

  Art. 1653 C.C.Q.

  « Conventional subrogation may be made by the creditor or the debtor, but it shall be made expressly and in writing. »

  Art. 1654 C.C.Q.

  « Subrogation may be made by the creditor only at the same time as he receives payment. It takes effect without the consent of the debtor, notwithstanding any stipulation to the contrary. »

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- Assignment of a Claim

  Art. 1637 C.C.Q.

  « A creditor may assign to a third person all or part of a claim or a right of action which he has against his debtor.

  He may not, however, make an assignment that is injurious to the rights of the debtor or that renders his obligation more onerous. »

- Art. 1641 C.C.Q.

  « An assignment may be set up against the debtor and the third person as soon as the debtor has acquiesced in it or received a copy or a pertinent extract of the deed of assignment or any other evidence of the assignment which may be set up against the assignor. »

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Interesting Points

- A creditor cannot refuse to accept payment from a third party (except for those rare cases) but cannot be put into default of not giving conventional subrogation;
- Subrogation is considering as an accessory to payment, therefore, a third party can only be subrogated in the amount and to the extent that they paid
- An assignment of a claim can be made even if the entire amount is not paid by the third party, but there is an obligation to notify the debtor

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The Case of the Missing Half-Million: Case 3

- Baumel ($ 1 million) → Mann ($1 million) → Bank
- Baumel ($500,000) → directly to the Bank – gets a release
- Did Baumel get a conventional subrogation or did he get an assignment of a claim?
- If Baumel got a conventional subrogation – he is only subrogated to the extent that he paid, even if the bank gave Mann a release (i.e. still owes $500,000)
- If Baumel got an assignment of a claim – then it is opposable to Mann, but he must receive notice of it and so he has the possibility of acting (i.e. owes $0)