

# Negotiorum Gestio

## 1. Statutory obligations

Where a party carries out another's affairs without having been requested to do so, certain obligations arise by operation of law to regulate the parties' relationship

- to ensure proper handling of the affairs
- to strike a balance between the parties' interests
- to ensure that the party who managed another's affairs does not have to sustain loss, does not gain from the gestio.

## 2. Distinct from donation:

- gestor manages other's affairs with intent to seek reimbursement (no intent to offer the service at one's own expenses)
- ex.: Volunteers tidying up the polluted coast after the oil-spill. Can they seek reimbursement?

## 3. Awareness that the affairs managed are not one's own

- 97Da26326: A requested B to pay 20 million KRW on behalf of A in settlement with C. B agreed. A promissory note in B's name was accordingly issued to C. When C presented the notes to B and demanded payment, B declined. A requested D to pay 25 million to C. D agreed and paid. When A could not reimburse D, D demanded reimbursement from B arguing that D's payment was negotiorum gestio for the benefit of B. *Dismissed*. Intent to manage the affairs as the other's affairs is required. *The gestor's management must not be against the wishes of the principal* (B in this case, who declined to pay and obviously did not want others to pay on B's behalf).
- 94Da59943: P paid 30 million to D (vice president of a

Transport company) believing that the money was for purchasing the scrap auto parts of buses sold by the Transport Company. P was led to believe so by a broker X who needed money for 2 scrap buses he previously purchased. D treated the money as the purchase price of scrap buses previously purchased by X. P sued D and sought reimbursement arguing the D failed to take due care as P's gestor. *Dismissed*. D was receiving the money, not as P's gestor, but as the seller of his own goods. If the affairs are not in fact other's affairs or if the gestor did not have the intent to manage other's affairs, no claim may arise out of the management of the affairs.

- As long as the gestor had the intent to manage affairs of "another", it does not matter whether the gestor was mistaken as to the precise identity of the beneficiary.
- As long as the affair is another person's affair, it does not matter whether the gestor actually incurred an obligation in gestor's own name. The affair does not become gestor's own affair merely because the gestor incurred the obligation in gestor's name. Incurring the obligation was itself a part of *gestio*, which was done on behalf of the other (the principal).

#### **4. Managing other's affairs believing that they are one's own, or believing that one has a duty to manage the affairs**

- Distinct from donation
- Distinct from negotiorum gestio, which is spontaneous, voluntary management of other's affairs
- Unjust enrichment issues may arise
- Ex.: Carrying out 'contractual' duties without realising that the contract was void, already rescinded or terminated.

#### **5. Managing other's affairs with intent to arrogate the benefit to himself**

- Unjust enrichment
- Wrongful interference with other's affairs

## 6. Gestor's duties

- No contractual duty of care
- Statutory duty to act in the best interest of the principal. Art. 734(1)
- Statutory duty not to act against the (presumed) wishes of the principal: otherwise, wrongful interference with other's affairs, in which case any loss to the latter must be compensated (gestor's lack of fault is not a defence).
- If, however, gestor's management was in the interest of the public or to avoid imminent danger to the principal's life, person, reputation or property, no liability arises except for gross negligence or bad faith. Arts. 734(2), 735
- Duty to account
- Duty to notify the principal
- Duty not to discontinue once commenced.

## 7. Scope of reimbursement

- Gestor's expenses (whether necessary or useful; whether or not they resulted in increase of value) must **all** be reimbursed provided that the gestor was not negligent.
- Gestor's loss sustained in the course of the management without any fault of the gestor, must be compensated. But the compensation may not exceed the benefit accrued to the principal as a result of the gestio. Art. 740
- If the gestor's management was against the wishes of the principal, no duty of reimbursement under Negotiorum Gestio. But unjust enrichment enjoyed by the principal must be disgorged.
- 97Da58507: Police sold perishable items (peanuts) seized from the suspect to avoid deterioration. The suspect was later found to be innocent. The police's management

(sale of peanuts to avoid perishment) was against the wishes of the principal. But the police may nevertheless claim reimbursement of expenses (to effect the sale) to the extent they were beneficial to the principal.