
The present volume, accepted as doctoral thesis at the University of Trier, deals with the legal concept of *causa* as the purpose of a legal act, more specifically of a contract entered into. In this sense of the term, *causa*, or in scholastic terminology *causa finalis*, is an important feature of every agreement. The volume is divided into two parts, of which only the first part (p. 21–143), dealing with the role of *causa* in the development of European contract doctrine through the ages, has a distinctly historical character. The second part (p. 144–305) deals with the *causa* of legal acts in the *Bürgerliches Gesetzbuch* and only occasionally pays attention to the precursors of the concept of *causa* in nineteenth century German legal doctrine, chiefly in the Historical School. The first part of the book is subdivided into two sections, one on the foundations of European contract doctrine and one on the subsequent development of that doctrine.

The first section starts with Roman law. Following the teachings of the Historical School, the author takes the concept ‘contract’ here rather widely, to include both the obligatory agreement and the agreement to transfer ownership (*dinglicher Vertrag*). In both categories there is a concept of *causa* which plays a distinct role, while in medieval doctrine it will appear that those concepts have analogous functions. According to Roman law, consent alone does not suffice to make a contract actionable. For every type of contract there is an additional requirement, such as a certain form (the contracts *verbis* and *litteris*), a handing over (real contracts and innominate contracts) or striving after the acknowledged purpose of the agreement (consensual contracts). When systematizing the law of contract, medieval jurists denoted the additional requirement that makes the contract enforceable as *vestimentum*. Moreover, this requirement was seen as an essential feature (*causa*) of the contract. After dealing with contractual *causa* as *vestimentum*, the *causa traditionis* is introduced, in which concept the author sees another incentive towards the modern view on the *causa* of the contract. This *iusta causa* presupposes consent between parties concerning the *causa* of the conveyance, but also concerning the transfer of ownership. After treating of Roman law, two other pillars of European contract doctrine are discussed: Canon Law and ancient German law. The canonists transformed the moral duty not to lie but to abide by one’s given word into an actionable agreement, while the scholastic doctrine of causality introduced, as one of its most important concepts, the *causa finalis*, i.e. the ground which moves the human will to action with regard to a certain purpose. The ancient German law of contract was only familiar with formal obligatory contracts. The famous maxim ‘ein Mann, ein Wort’ (a promise is a promise), only applies to cases where an enforceable contract had already come into being.

In the section on the further development of European contract doctrine, first the rediscovery and the systematization of the Roman law of contracts is dealt with. On the basis of D. 44,4,2,3 Accursius (c. 1182–1263) was of the opinion that for a stipulation to be actionable it is required that parties put into words the *causa* (underlying ground) of their agreement. At the same time Accursius deduced from C. 4,30,13 that in written contracts (deeds) the *causa* exists in a preceding obligatory contract. From this perspective *causa* in contract comes close to the significance attributed by the glossators to the *iusta causa traditionis*. The commentators further developed these thoughts and maintained that the *causa* of a stipulation can exist not only in the preceding obligation, but also in the rational grounds why the stipulation should be regarded as a serious agreement between parties. The latter too, if phrased explicitly, can render the stipulation enforceable. Such an understanding cancels the restriction to written contracts. Hence for any contract
to be actionable it is only required that its *causa* is mentioned. Baldus (1327–1400) subsequently taught that in Canon law the *pactum nudum* is indeed actionable, but only provided it contains a *causa* such as could be adopted in a stipulation. This became the prevailing view. Already the Liber Extra (1234) ruled that a *causa* should be explicitly adopted in written contracts (X 2.22.14), while the influential canonist Panormitanus (Nicolaus de Tudeschis, 1386–1445) declared that this holds good for a *nudum pactum*. Thus, the canonists followed the view that the *causa* is indicative of the parties’ serious intentions to enter into the contract.

After dealing with medieval legal doctrine and practice, the author focuses on the ‘emancipation’ from the Roman system of contracts. In the seventeenth century the idea became generally accepted that, according to contemporary customs (*mores hodierni*), all contracts are actionable. This could not be based dogmatically on Roman law. Instead the jurists had recourse to principles of *ius gentium*, indigenous law and, eventually, to the Canon law of contracts, albeit as restricted by Baldus through the *causa*-requirement. The autonomous human will became the most important element in the new and general concept of contract and took the place of the ancient formalities. Under the authority of this autonomy we see, in the scholars of Natural law, contractual consent moving to the centre of contract doctrine. The will is expressed informally but is clearly perceptible, while the contract exists in offer and acceptance. Of the Natural Law scholars, dealt with in this volume, it is only Hugo Grotius (1583–1645) who explicitly mentions the *causa*-requirement in his *Inleidinge tot de Hollandsche Rechtsgeleerdheid*, albeit that other scholars discern between the purposes of contracts, i.e. either exchange or donation.

At the end of the section on the development of European contract doctrine, the author discusses the role of the *causa*-requirement in three early Codes of Civil Law, i.e. the French *Code civil* (1804), the AllgemeinesLandrecht für die PreußischenStaaten (1794) and the Austrian *Allgemeines bürgerliches Gesetzbuch* (1812). Only the French Code recognizes the *causa* as an explicit requirement for actionable contracts. In the other two Codes the *causa* plays a role at the more abstract level of expressing the will. The substance of *causa* is no longer primarily determined by the serious intention of the parties, but rather by the immediate purpose of the contract i.e. to exchange or to donate. None of the three Codes is compatible with the idea that abstract contracts can be actionable.

In short, one can say that the first part of the volume presents a clear overview of the development in European contract doctrine through the ages and the role played by the *causa*-requirement for the present-day, self-evident principle of freedom of contract. Unfortunately the author did not have the courage to take the Roman law of Justinian as his starting point. Classical Roman law can be interesting from a comparative perspective and indeed here we may find the origin of the development of contract law (p. 24), but it can obscure our perception of medieval and early modern dogmatic developments. If we want a clear understanding of medieval legal scholarship, the later *mos italicus* and to a large extent the *usus modernus*, we should realize that the approach of these towards the *Corpus iuris civilis* has never been that of the twentieth century handbooks which focus on a reconstructed classical Roman law. Whether the present volume actually fills a gap (or part of it), as is suggested (p. 16), may be questioned. Zimmermann’s renowned *The law of obligations* already provides an excellent outline of much of the

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1 The author suggests that this is a more recent work compared to *De iure belli ac pacis* (cf. p. 98 and 108), whereas it was compiled previously, *viz.* during Grotius’s captivity at Loevestein; see Hugo de Groot, *Inleiding tot de Hollandsche Rechtsgeleerdheid*, ed. F. Dovring, H.F.W.D. Fischer and E.M. Meijers, Leiden 1952, p. XI and XIX.