ACTIONES ADIECTICIAE QUALITATIS: 
MASTER’S LIABILITY 
BASED ON PRAEPOSITIO AND IUSSUM

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1. INTRODUCTION

Roman law as well as other ancient legislations did not know about direct representation in legal affairs the way positive law does. In theory of Roman law, there is an uncontested rule of lack of representation (alteri stipulari nemo potest), which dates back to the earliest time of ius civile. This rule was established in customary law as part of civil law and Roman jurists strongly supported it throughout the whole period of Roman law (from the Law of the Twelve Tables until Justinian’s codification).\(^1\) Strict adherence to this principle would mean that trade could only be personally conducted.\(^2\) However, the change of social and economic background looms in the third century B.C. and leads to a practical need of moderating this principle. Dominant economic setting based on agriculture and handicrafts, gave way to the developed trading system with an international element. Undeveloped Roman trade circulated in a modest domain and was limited to land routes (Via Appia, Via Flaminia, Via Aurelia, Via Aemilia). Romans became conquerors beyond borders of the Apennine peninsula and thus established connections with new colonies, due to intense development of overseas trade.\(^3\) Along with overseas trade, land trade also progressed. That fact led to the development of economic law to its full extent. Some informal con-


\(^2\) According to Roman law, pater familias could not be directly represented by another paterfamilias.

tracts as *emptio-venditio, societas, locatio-conductio* or *mandatum* got legal protection through the formulary procedure. *Pater familias* saw that trade market was wider now and began to engage his subordinates, sons and slaves to conduct some legal affairs for them. It often happened that persons outside the family (extraneous agents) were holders of father’s business activity. Despite the fact that the agent was sui or *alieni iuris*, it was necessary to create an appropriate legal framework for its appearances in legal transactions. That was the reason for the praetor as a law making institution to introduce *actiones adiecticiae qualitatis*. Actions never derogated the principle of civil law about prohibition of direct agency but praetor supplemented and corrected the shortcomings of Roman civil law. According to those actions, the liability of the principal based on contracts concluded by dependents or free persons was extended. With the help of *actiones adiecticiae qualitatis* Romans succeeded in carrying on intensive and far-reaching commercial activities without a developed concept of agency. Roman case law developed functional equivalent for direct agency and depersonalization of business. It showed the way Romans overcame collision between rigid rules of Roman civil law and practical everyday needs of Roman society. Praetor and classical jurists showed great respect for the civil law and the work of “*veteres*” and they never openly derogated its principals.

### 2. *ACTIONES ADIECTICIAE QUALITATIS* IN GENERAL

A modern concept of agency implied that the agent acted in the name of principal so that all rights and obligations were accrued to the principal and not to the agent. Slaves and sons did not have property separate from paterfamilias and everything they acquired became the property of paterfamilias. Hence, Roman law did not provide for direct agency between two freemen with full legal capacity. Roman concept of direct agency was implicitly carried by praetorian actions. *Actio exercitoria, actio institoria, actio quod iussu* provided for the principal’s unlimited liability unlike other *actiones adiecticiae qualitatis*, when the principal’s liability was limited by *peculium* (*dumtaxat de peculio*) or the amount of enrichment (*quaetenus in rem eius versum fuit*). These remedies made a slave or other free person de facto agent in direct agency. Masters could not sue a third party arising from contracts concluded by extraneous agents, but they could
start a litigation arising from a contract concluded by persons in power. In order to properly understand those actions it is necessary to put aside all differences that existed between Roman concept of agency and modern, positive regulation of agency.

Actions have special legal nature because they contain two possible passive parties, the master and the agent who could be a dependent (slave or son) or a free person. The agent was liable to the third party when he had the capacity to act as a party in court at solvency requirement. Agent could be a slave or free, *sui iuris* or *alieni iuris*, male or female, adult or minor, even a ward. In case where a slave acted out as agent, there was only *obligatio naturalis*. *Obligatio naturalis* could not be enforced against them directly. When the agent was dependent – slave, son, daughter or wife the relationship was non-contractual and was based on power (*potestas* or *manus*) of principal over his dependent. When the agent was a free man, the relationship was defined by the rules of contract of mandate or hire. Under Roman law, slaves lacked legal personality, hence they were not able to own assets or enter into contracts. According to classical jurisprudence it is obvious that the third party could choose who would be the defendant (*debitor*), the agent (if it is a free person) or the principal. Since rights and obligations were accrued to the principal rather than to agents, the third party had more interest in suing the principal (owner or paterfamilias). The paterfamilias' liability was unlimited in the amount, but limited only to the debts incurred by family members within the scope of *praepositio*. *Praepositio* was appointment between principal and agent which determined the scope of principal's liability. Any contract negotiated by agent that fell outside the scope of *praepositio* would have no effect upon the principal. Since the purpose of *praepositio* was to inform every potential third contracting party of scope of principal's liability, publicity of *praepositio* was essential.

3. MASTER'S LIABILITY BASED ON ACTIO EXERCITORIA

According to the sources, this action is discussed under a separate title in Digest which was set up as an introductory title in the fourteenth book of Digest. *Actio exercitoria* was an action introduced by praetor in the end of second century b.C or in the beginning of first century b. C. Dilemma about the time of issuing
this action is widely discussed, especially in context to action institoria. Chronologically, actio exercitoria appeared prior to actio institoria and provided direct and full liability for the master. Master was liable against the third party for legal affairs concluded by the agent, in this case called magister navis.

Although actio exercitoria is considered a genuine institute of Roman praetorian Law, some legal theoreticians advocate its Greek Law origin and subsequent inclusion into Edict.\(^4\) In favor of this theory Seidel argues: a temporal match in regulation of actio exercitoria and Lex Rhodia de iactu\(^5\), nearness in Digest between these two titles (actio exercitoria D. 14.1. and Lex Rhodia de iactu D. 14.2). Although crucial Greek influence in maritime Law cannot be delegated, but those general assumptions are not enough to conclude that actio exercitoria was transplanted from Greek Law. Seidel's opinion is intriguing because Romans would sometimes used and adapt Greek Law institutes but in case of actio exercitoria there is an obvious lack of proof, including etymological doubt.

Master's liability was based on praepositio and its established conditions.

E.P. 18.101. De exercitoria actione. Quod cum magistro navis gestum erit, eius rei nomine, cui ibi praepositus fuerit, in eum, qui eam navem exercuerit, iudicum dabo. Si is, qui navem exercuerit, in patris dominive (alterius) potestate erit eiusque voluntate navem exercuerit, quod cum magistro eius gestum erit, in eum, in cuius potestate is erit qui navem exercuerit, iudicum dabo.

D. 14.1.1.7. Non autem ex omni causa praetor dat in exercitorem actionem, sed eius rei nomine, cuius ibi praepositus fuerit, id est si in eam rem praepositus sit, ut puta si ad onus vehendum locatum sit aut aliquas res emitter utiles naviganti vel si quid reficiendarum navis causa contractum vel impensum est vel si quid nautae operarum nomine petent.

Praepositio is an act of authorisation given by exercitor\(^6\) (exercitor is a person who is receiving the profits of a ship, whether he is owner or tenant of the

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5 KRELLER, H. Lex Rhodia. Untersuchungen zur Quellengeschichte des römischen Seerechtes. – In: Zeitschrift für das gesamte Handelsrecht, Vol. 85, 1921, S. 272, 264. Lex Rhodia de iactu is older than actio exercitoria (it is established approximately in 9. or 8. century b.C). It represents unwritten customary law, taken most probably from the Carthaginians and the Phoenicians.
6 D. 14.1.1.15–16. Ulpianus, libro 28 ad dictum Exercitorem autem eum dicimus, ad quem obvocationes et reditus omnes perveniunt, sive is dominus navis sit sive a domino navem per aversionem conduxit vel ad tempus vel in perpetuum. Parvi autem referit, qui exercet masculus sit an mulier, pater familias an filius familias vel servus: pupillus autem si navem exerceat, exigemus tutoris auctoritatem.
ship) to *magister navis*\(^7\) (captain of the ship who has command of the ship) or his *promagister navis*\(^8\) (captain's deputy). *Exceritor* made *praeposito* in a form of one sided declaration of will. In *praeposito* will (voluntas) must be shown, not only knowledge (*scientia*). The *exceritor* would define his will in a positive way, otherwise he was made *proscriptio* not *praeposito*. *Proscriptio* means that the *exceritor* excluded certain person or group of persons of possibility to be *magister navis*. When Roman jurists talk about *praeposito*, they talk about existence and extent of master's liability (*cuius ibi praepositus fuerit*). Without an established *praeposito* between *exceritor* and *magister navis*, master wouldn't be liable to the third party (*Non autem ex omni causa praetor dat in exercitor em actionem, sed eius rei nomine, cuius ibi praepositus fuerit, id est si in eam rem praepositus sit*). Third party could sue master under the *actio exercitoria* if contract concluded with *magister navis* fell within the scope of *praeposito*. If the contract was not within those purposes for which *magister navis* was appointed, the action against *exceritor* was not available. *Praeposito* could be defined in general (*D. 14.1. Gaius, 4.71. ...tunc autem exercitoria locum habet, cum pater dominusve filium servumve magistrum navi praeposuerit, et quid cum eo eius rei gratia cui praepositus fuerit gestum erit*) or specific terms (*D. 14.1.1.7*). That means that *exercitor* could with different *praeposito* authorize *magister navis* to perform various tasks for him, or could assemble all authorities in one *praeposito*. *Magister navis* was conferred full authority to execute the duties of a ship’s captain and he could enter in contracts relating to the ship, its seaworthiness and freight (eg carriage of goods, loan for repair of the ship or payment for sailor’s services). When it comes to general *praeposito*, *magister navis* could perform his tasks in wide boundaries defined in *praeposito*. When it comes to specific *praeposito*, *magister navis* had to act in conformity with the narrow conditions established in it (to perform type of obligation established in *praeposito* and not exceed the boundaries). Also, *praeposito* could be given in express or tacit manner. Express manner implies that *praeposito* must be declared to the

\(^7\) D. 14.1.1.4. *Cuius autem condicionis sit magister iste, nihil interest, utrum liber an servus, et utrum exercitoris an alienus: sed nec cuius aetatis sit, intererit, sibi imputaturo qui praeposuit.*

\(^8\) D. 14.1.1.5. *Ulpianus, libro 28 ad editum Magistrum autem accipimus non solum, quem exercitor praeposuit, sed et eum, quem magister.*
third party in public place and so that the third party could know about praepositio.

Praepositio mostly affects the third party because it enters into contract under conditions established in praepositio. So, if the third party is not introduced to the limits of master’s liability but enters the contract which is not in accordance with praepositio, it would be denied legal protection under actio exercitoria. Ulpian makes clear in his formulation “propter navigandi necessitatem contrahamus” that overseas trade requires special regime of master’s liability. The requirement that the third party should not be blamed for partial ignorance of conditions under which a contract is concluded, suggests that master is sometimes liable beyond limits of praepositio. Special regulation was prescribed in the best interest of the third party, when she could not be introduced to praepositio because neither the place nor the time permitted it (in navis magistro non ita, nam interdum locus tempus non patitur plenius deliberandi consilium.). Extension of master liability was not due to an express provision of edict but work of lawyers. Lawyers upgraded master’s liability under action exercitoria in regard to action institoria (cum sit maior necessitas contrahendi cum magistro quam institore). In addition to Ulpian’s approach to extended master’s liability, Gaius claims that relationship of trust must exist between parties (Gaius, 4.70. ...quia qui ita negotium gerit, magis patris dominiue quam filii seruiue fidem sequitur.). Master’s liability covered, ex utilitate navigantium, the contracts of deputy appointed by the magister navis, even though exercitor had forbidden deputy. The strictly binding nature of master’s liability was characteristic of Roman fidelity.

Master (whether the exercitor or person who delegates authority to exercitor) was liable in solidum on the contracts of magister navis (D. 14.1.1.17. Est autem nobis electio, utrum exercitor em an magistrum convenire velimus.). The third party could conclude a contract either with exercitor or magister navis; also, the third party could address action exercitoria to exercitor or magister navis. Actio exercitoria offers the third party right of choice, whether to sue exercitor or magister navis. When the third party sued the exercitor (or master) directly, there was a greater chance of a more complete settlement of obligations. Magister navis had at his disposal limited resources that could be exhausted during the exercitio and third party would be at risk for not settling its
claim. Also, minors, slaves, women could be found in the position of magister navis and that made the situation for the third party more difficult.

Relationship between exercitor and magister navis was regulated by Roman Family Law or appropriate contract (locatio-conductio or mandatum). Liability of exercitor against the third party was determined in praepositio. Exercitor was responsible factum praestare, which included all legal actions taken by magister navis in the context of praepositio (D. 14.1.1.5. omnia enim facta magistri debo praestare qui eum praeposui.) The question that arises from the statement below is whether the exercitor is responsible for sailors’ act and whether their acts are included in “factum praestare”? In answering the question, the following fragments by Ulpian provide instructive information:

D. 4.9.7.pr. Ulpianus libro 18 ad edictum Debet exercitor omnium nautarum suorum, sive liberi sint sive servi, factum praestare: nec immerto factum eorum praestat, cum ipse eos suo periculo adhibuerit. Sed non alias praestat, quam si in ipsa nave damnum datum sit: ceterum si extra navem licet a nautis, non praestabit. Item si praedixerit, ut unusquisque vectorum res suas servet neque damnum se praestaturum, et consenserint vectores praedictioni, non convenitur.

D. 14.1.1.2. Ulpianus, libro 28 ad edictum, Sed si cum quolibet nautarum sit contractum, non datur actio in exercitor em, quamquam ex delicto cuiusvis eorum, qui navis navigandae causa in nave sint, detur actio in exercitor em: alia enim est contrahendi causa, alia delinquendi, si quidem qui magistrum praeponit, contrahi cum eo permittit, qui nautas adhibet, non contrahi cum eis permittit, sed culpa et dolo carere eos curare debet.

Exercitor would not be responsible for contracts concluded by sailors, because the sailors were not given authority by praepositio. However, exercitor was liable for delicts made by sailors. In purpose of restitution of damage, third party could use actio exercitoria against master. Master's liability is considered as vicarious responsibility. It is based on his wrongful choice of subordinate (culpa in custodiendo, culpa in vigilando, culpa in eligendo). Magister navis chose crew members based on authority from praepositio, so in the end, master was liable for captain's fault. The third party could use other legal remedies against exercitor, such as actio furti et damni adversus nautas or actio ex recepto. Actio furti et damni adversus nautas had a penal character and exercitor had to indemnify third party in double amount. Master's liability ex pactum receptum was objective, based on the fact that he was employer of a delinquent. The master was considered liable because of his failure to prevent the delict by
providing better custody for passenger's personal belongings. So, his liability is vicarious and indirect.

4. MASTER'S LIABILITY BASED ON ACTIO INSTITORIA

Actio institoria made the master liable for legal affairs concluded by the manager of the shop in the master's interest. Although, actio institoria had the same concept as actio exercitoria, master was liable without limit for the actions of his institor (manager), the application of action institoria had much wider scope than action exercitoria. So, institor could perform multiple activities, such as agriculture (agris colendis praepositi)\(^9\), monitoring the buildings (insulaei et aedificio praepositi)\(^10\), grocery (frumento coemendo praepositi)\(^11\), mule drivers (muliones)\(^12\), clothing merchants and weavers of linen (vestiarii, lintearii)\(^13\), supervisor of water supply (circitores)\(^14\), corps preparing for burial (libitinarii, pollinctores)\(^15\), bakery (pistores)\(^16\), fullers, tailors (fullones, sarcinatores)\(^17\), banking (pecuniis faenerandis praepositi)\(^18\), stable keepers (stabularii)\(^19\). We will use Ulpian's formulation which presents higher level of generalization to define the position of institor (D. 14.3.8. Ulpianus, libro 28 ad edictum Institor appellatus est ex eo, quod negotio gerendo instet: nec multum facit, tabernae sit praepositus an cuilibet alii negotiationi). Institor concluded legal affairs in favor of master, managed his commerce and other related activities. Expression “other related activities” suggests that institor could be entitled to any activity according to condicio praepositionis.

Diversity and modus operandi of institor's activities brings certain doubt in the extent of master's liability. Republican jurist, Servius Sulpicius Rufus, offered

\(^9\) D. 14.3.5.2.
\(^10\) D. 14.3.5.1.
\(^11\) D. 14.3.5.1.
\(^12\) D. 14.3.5.5.
\(^13\) D. 14.3.5.4.
\(^14\) D. 14.3.5.4.
\(^15\) D. 14.3.5.8.
\(^16\) D. 14.3.5.9.
\(^17\) D. 14.3.5.10.
\(^18\) D. 14.3.5.2.
\(^19\) D. 14.3.5.6.
undoubted proof that master is liable only when he was engaged in activities predicted in praepositio (D. 14.3.5.1. Nam et Servius libro primo ad Brutum ait, si quid cum insulario gestum sit vel eo, quem quis aedificio praeposuit vel frumento coemendo, in solidum eum teneri.). His idea was followed by early classical jurist Labeon, who stressed that activities deriving from praeposito must be stated clearly in it. Ultimately, following the ideas of his older colleagues, Paul resolved the doubt in application of action institoria.

D. 14.3.16. Si cum vilico alicuius contractum sit, non datur in dominum actio, quia vilicus propter fructus percipiendos, non propter quaestum praeponitur. Si tamen vilicum distrahendis quoque mercibus praepositum habuero, non erit iniquum exemplo institoriae actionem in me competere.

Since we do not know anything about the time of this innovation and who it was launched by, we can only presume that action based on analogy (action ad exemplum institoria) was related to the activities of praetor. A fact in support of such a conclusion reveals that the fragment cited from Paul is from his commentary on the praetor’s edict. The basic question here is whether this extension refers to activities exercised outside of praepositio. In late classical jurisprudence action institoria ad exemplum could be applied against the master when vilicus was set as institor. On the contrary, when vilicus was not set as institor by praeposition, third party could not sue master with action institoria. Divergence in opinions leads to delineation between core business activity and additional activities. When it comes to additional activities, master would be liable only when they could subsumed under praepositio. It is important to mention that additional activities were performed during the conclusion of contracts in the context of considered business activity, such as contract of sale, purchase, loan, lease.

It is necessary to mention a one more difference between action exercitoria and action institoria. Institor could not delegate his deputy the way the magister navis could. Only master could set a new person as institor. However, this conclusion is more due to Ulpian words “cum sit maior necessitas contrahendi cum magistro quam institore” regarding action exercitoria, rather than action institoria. Most Romanists consider those words as sufficient proof of

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20 Vilicus is free man or slave who managed the master’s rural estate (villa rustica) including agriculture and households.
forbidden substitution of *institor*.\(^{21}\) In other Ulpian’s text it is apparent that *institor* could be named by procurator, curator or tutor, with full master’s liability (D. 14.3.5.18. *Sed et si procurator meus, tutor, curator institorem praeposuerit, dicendum erit veluti a me praeposito dandam institoriam actionem.*). From cited text it is obvious that master could be responsible for legal affairs concluded by *institor* who was not named by his will. So, procurator and other agents, except the *institor* himself, who took care of master’s business were entitled to name *institor*. The inevitable question that arises in this matter is what will happen with obligation when *institor* dies or renounces. The above mentioned activities, including commerce demanded continuity, hence someone had to replace *institor* on that place. Will master be bound during the *vacuum legis*, when *institor* is no longer *institor* and master has not yet set up a new *praeposito*? It seems probable that this situation was resolved in favor of a third party, so master was responsible as *dominus negotti* from *negotiorum gestio*.

Since master empowers *institor* with *praeposito*, he (or she) could conclude valid contracts. *Praeposito* had to be written in understandable language and posted in public and appropriate place (D. 14.3.11.3. *Proscribere palam sic accipimus claris litteris, unde de plano recte legi possit, ante tabernam scilicet vel ante eum locum in quo negotiatio exercetur, non in loco remoto, sed in evidentii.*). If master followed these prescribed rules, third party could not call for ignorance (D. 14.3.11.3. *Certe si quis dicat ignorasse se litteras vel non observasse quod propositum erat, cum multi legerent cumque palam esset propositum, non audietur*). The content of *praeposito* was established with tendency of duration (D. 14.3.11.4. *Proscriptum autem perpetuo esse oportet*). In case restrictions arose at a later period, or new conditions were introduced, they had to be made public, in the way that was done with *praeposito*.

*Institor* concluded contracts personally, in his name but the third party would have a right to proceed against master. Master as the sued party in the litigation had a legal position of the defendant, and not the *institor*’s representatives. His name appeared in condemnation and the judgment was enforced on his property.

Master could not sue the third party to execute obligations from concluded contract because he did not have a legal remedy. Alan Watson uses expression “one way” action for *actiones adiecticiae qualitatis*\(^\text{22}\), because the master was unable to directly protect his rights under these actions. Watson’s theory of “one way” actions is not to be questioned, but Marcel’s (14.3.1. *Ulpianus libro 28 ad edictum Marcellus autem ait debere dari actionem ei qui institorem praeposuit in eos, qui cum eo contraxerint.*) and Gaius’s (D. 14.3.2. Gaius libro nono ad edictum provincial Eo nomine, quo *institor* contraxit, si modo aliter rem suam servare non potest.) opinions make room for justification of the existence legal protection of the master. These distinguished jurists recognized *vacuum legis* in Edict and considered that master should have legal protection. In the time of issuing Edict, *institors* were mainly slaves and persons *alieni iuris*, so paterfamilias through them, accrued the right to legal proceeding against third party. When an extraneous person was set as *institor*, master did not have any right to proceed against third party. So, Marcel pointed out that master’s legal position should be more secure in the sense that he should be entitled to a lawsuit. This classical jurisprudent coincides in opinion with his predecessor, Gaius, who offers a solution for legal remedy in the field of contract litigation. Compilers found it convenient to combine these two views and simply show that idea of master’s legal protection was introduced in sources. We cannot distinguish much more from these lines. But, a concrete legal remedy was proposed elsewhere, in the nineteenth book of Digest (D. 19.1.13.25. *Ulpianus libro 32 ad edictum Si procurator vendiderit et caverit emptori, quaeeritur, an domino vel adversus dominum actio dari debeat. Et Papinianus libro tertio responsorum putat cum domino ex empto agi posse utili actionem ad exemplum institoriae actionis, si modo rem vendendum mandavit: ergo et per contrarium dicendum est utilem ex empto actionem domino competere.*). The master was entitled to *actio utilis ex contractu* which was concluded by *institor*.

5. MASTER’S LIABILITY BASED ON ACTIO QUOD IUSSU

*Actio quod iussu* is one more pretorian legal remedy, introduced together with action de *peculio* and action de in rem verso. These actions were called

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“inferiores” and were described in the fifteenth book of Digest. Compilators considered non-commercial character as common denominator for these three actions, although it is clear that these actions could be used as a basis for business venture. The reason why we consider action *quod iussu* together with action *exercitoria* and action *institoria* is master’s unlimited liability based on *iussum*. *Actio quod iussu* was introduced in time of Labeon (approximately 50 b.C.–20 a.D.).

The following fragments from the Digest offer comprehensive information about the legal regime of the action *quod iussu*:

*Edictum perpetuum, 104c:* *Quod iussu eius, cuius in potestate erit, negotium gestum erit, in eum, in cuius potestate erit, in solidum iudicium dabo.*

*G. 4.70.* *In primis itaque si iussu patris dominive negotium gestum erit, in solidum praetor actionem in patrem dominumve comparavit, et recte, quia qui ita negotium gerit, magis patris dominive quam filii servive fidem sequitur.*

*I. 4.7.1.* *Si igitur iussu domini cum servo negotium gestum erit, in solidum praetor adversus dominum actionem pollicetur, scilicet quia qui ita contrahit fidem domini sequitur.*

*D. 15.4.1.* *Ulpianus, libro 29 ad edictum.* *Merito ex iussu domini in solidum adversus eum iudicium datur, nam quodammodo cum eo contrahitur qui iubet.*

First, authority given by master as *dominus negotti* was called *iussum*. *Iussum* was a complex legal notion that suffered changes through time, but in the context of action *quod iussu*, *iussum* was considered as authorization given to the third party to conclude contracts with his sons and slaves. In other words, iussum was an open call to the third party to conclude contracts with his *alieni iuris* persons. *Iussum* could be recalled (D. 15.4.1. *Ulpianus, libro 29 ad edictum an revocare hoc iussum antequam credatur possit*) before the contract was concluded without any particular limitation. Here, we must distinguish *iussum* and *praepositio*, because iussum is more flexible and does not require fulfillment of all conditions mentioned for *praepositio*. Also, *praepositio* authorizes *magister navis* or *institor* to conclude a various number of contracts. On contrary, *iussum* is a precise authorization given for the purpose of concluding a contract with his *alieni iuris* person. As we can see, slave authorized by *praepositio* could continuously carry out business activities and slave authorized by *iussum* was only occasionally engaged in business activities. As far as form of authorization is
considered, no special form was needed. *iussum* could be general or special\(^{23}\), given by mandate\(^{24}\) or ratification\(^{25}\). Contracts were valid if they were concluded according to *iussum*. Excess of *iussum* does not vitiate contract in its entirety, it is valid so far as *iussum* goes (D. 15.4.3. *Ulpianus libro secundo responsorum Dominum*, qui iussit semissibus usuris servo suo pecuniam mutuam credi, hactenus teneri quatenus iussit: nec pignoris obligationem locum habere in his praediiis, quae servus non ex voluntate domini obligavit.).

Secondly, specificity of the third action was based on the fact that only family members (sons or slaves) could act as agents. So, free persons outside of family could not conclude contracts based on *iussum*, or better said, master would not be liable by action *quod iussu*. Relationship between master and person *alieni iuris* was based on *patria potestas*, which implies master’s economic power over person *alieni iuris*. That is the reason why *iussum* is directed towards third party rather than person *alieni iuris*. Consent of person *alieni iuris* is not taken in consideration, rather was assumed. It is impossible not to mention here Kaser’s organic theory of representation (Organschaft).\(^{26}\) According to Kaser, Roman family was identified with human body. In the same way as a human uses his limbs or legal entity uses its organs to act, Roman paterfamilias was able to act through his dependents. For purpose of acquisition they served as animated instruments.\(^{27}\) This theory could be applied on time before issuing the action *quod iussu*, when persons *alieni iuris* were acting on behalf of paterfamilias without *praepositio* and *iussum*. Did persons *alieni iuris* concluded legal affairs in their or in the name of paterfamilias is irrelevant nor permission of paterfamilias. Acquisition for paterfamilias in such way was not necessary to justify, because paterfamilias was owner of entire family property and all subordinates have acquired, they acquired for him. With *iussum* (and *praepositio*) it is possible

\(^{23}\) D. 15.4.1.1. *Iussum autem accipiendum est, sive testato quis sive per epistulam sive verbis aut per nuntium sive specialiter in uno contractu iussisset sive generaliter: et ideo et si sic contestatus sit: "quod voles cum Sticho servo meo negotium gere periculo meo", videtur ad omnia iussisse, nisi certa lex aliquid prohibit.

\(^{24}\) D. 15.4.1.3. *Sed et si mandaverit pater dominusve, videtur iussisse.*

\(^{25}\) D. 15.4.1.6. *Si ratum habuerit quis quod servus eius gesserit vel filius, quod iussu actio in eos datur.*


to sue *pater familias* in limits anticipated in it. If there is no *iussum*, obligation of person *alieni iuris* remains *obligatio naturalis*. *Iussum* provides third party with the right to sue and third party believes (based on *iussum*) that contractual obligation will be executed.

6. CONCLUSION

*Actiones adiecticiae qualitatis*, especially *actio exercitoria*, *actio institoria*, *actio quod iussu* offered a practical solution to modern corporate business. Those actions represented grounds for the development of business structure known as “holding”, because the master was the holder of stake and bore a business risk in concluded legal affairs. Question of the extent of the principal’s liability, its boundaries and exclusion was solved by agency rules of Roman law and family property law. Limited liability raised a possibility of distribution of business risk among parties, which improved position of the principal who was no longer the main creditor.

Solidarity between *exercitor* and *magister navis*, *dominus negotii* and *institor*, *dominus* and *servus/filius* showed that the principal could be the third party’s first choice to sue. The principal was the party that the third person had in mind when entering into a contract. Trilateral legal affair between the principal, dependent and the third parties needed effective legal protection and strict separation of patrimonial from business assets. The principal's full liability for actions taken by another, not necessarily his dependents, showed that the principal was bound by them.