

A Roman Solution to a Timeless Fraud. From *Fraus Creditorum* to *Actio Pauliana* in the Romanian Civil Code of 2009

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Abstract

*This article briefly examines the enduring problem of *fraus creditorum* and the Roman solution devised to address it, which also inspired the provisions on the *actio Pauliana* in the Romanian Civil Code of 2009. It seeks to identify the forms that a debtor's fraudulent conduct could - and still can - take, its effects, the remedies available to creditors, and the conditions governing their use. After outlining the *actio Pauliana* by reference to the provisions of the Romanian Civil Code, leading doctrinal sources, and selected judicial decisions, the article compares the Roman and contemporary actions. The comparison highlights both continuities and differences between the ancient institution and its modern counterpart and shows how present-day legal problems may still find solutions inspired by the past.*

Keywords: *fraus creditorum*, fraud against creditors, *actio Pauliana*, Roman law, Romanian law.

JEL Classification: K12, K15

1. Roman law. *Fraus creditorum* and *actio Pauliana*

A. The phenomenon of fraud against creditors most likely emerged, and in particular became widespread, once debtors were no longer exposed to the harsh consequences of enforcement. Initially, enforcement was directed against their person rather than their property and resulted in the loss of life or liberty.

In the period of the *legis actiones*, a person who, although ordered to pay, failed to satisfy the obligation established by the judgment within 30 days of its delivery was subject to enforcement by *manus iniectio*. After the 60 days during which he held the status of *addictus* (de iure a free person, de facto a slave) and was kept in his creditor's private prison (the magistrate having assigned the debtor's person to the creditor), he was killed or sold as a slave *trans Tiberium*, and his property passed to the creditor².

The formulary procedure did not abolish enforcement against the person, but merely mitigated it. A debtor who failed to pay was (only) compelled to work for the creditor in discharge of the debt, but no longer faced death or loss of liberty as a consequence of failing to perform the obligation undertaken³.

The widespread use of enforcement against property through *venditio bonorum*, which entailed the bulk sale (rather than sale item by item, as in *distractio bonorum*⁴) of all the assets of an insolvent debtor, eased the strained relations between creditors and

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² Dan Oancea, *Introducere în dreptul roman* (Bucharest: C.H. Beck, 2009), 23–24.

³ Oancea, *Introducere în dreptul roman*, 48.

⁴ Of later origin, *distractio bonorum* was a form of enforcement against property introduced so that members of the upper strata of Roman society who had fallen into poverty would not be declared infamous, as happened to debtors subjected to enforcement through *venditio bonorum*.

debtors⁵, thereby prompting the latter to adopt practices intended to frustrate enforcement proceedings against them.

B. In this context, the praetor sanctioned a delict, *fraus creditorum*, consisting in conduct by which a debtor created or aggravated his insolvency to the detriment of his creditors⁶. The procedural remedy protecting the creditors' interests was a personal, *in factum*, arbitrary, and penal action known as the *actio Pauliana*. Apparently in use as early as Cicero's time⁷, the action appears under this name only in the compilations of Emperor Justinian, although a classical text⁸ (subject to possible interpolations) also referred to the *actio Pauliana*⁹. According to some authors, the *actio Pauliana* arose from the merger of two other procedural remedies made available to creditors harmed by fraudulent transactions concluded by debtors - *restitutio in integrum ob fraudem creditorem* and *interdictum fraudatorium* - or, in any event, developed after them¹⁰. Others take the view that the interdict (*adipiscendae possessionis*), whose scope was narrower and limited to corporeal property, preceded the *actio Pauliana*, which was subsequently supplemented by a *restitutio in integrum*¹¹.

C. Four conditions had to be satisfied cumulatively in order to bring the Paulian action¹²:

a) the debtor had to enter into a transaction that diminished his estate. The action was not available where the debtor merely refrained from enriching himself¹³.

⁵ Ioan C. Cătuneanu, *Curs elementar de drept roman*, 3rd ed. (Cluj: Cartea Românească, 1927), 411.

⁶ Vladimir Hanga, *Drept privat roman* (Bucharest: Editura Didactică și Pedagogică, 1978), 403; Emil Molcuț and Dan Oancea, *Drept roman* (Bucharest: Casa de Editură și Presă Șansa, 1993), 330; Mircea-Dan Bob-Bocșan, *Manual elementar de drept privat roman*, 3rd rev. and expanded ed. (Bucharest: Universul Juridic, 2022), 293.

⁷ Paul Frédéric Girard, *Manuel élémentaire de droit romain*, 8th ed., rev. and updated by Félix Senn (Paris: Arthur Rousseau, 1929), 457.

⁸ Justinian, *Digest* 22.1.38.4: “*In Fabiana quoque actione et Pauliana, per quam quae in fraudem creditorum alienata sunt revocantur, fructus quoque restituuntur: nam praetor id agit, ut perinde sint omnia, atque si nihil alienatum esset: quod non est iniquum (nam et verbum ‘restituas’, quod in hac re praetor dixit, plenam habet significationem), ut fructus quoque restituantur*” (In the Fabian action, as in the Paulian action, by which alienations made in fraud of creditors are revoked, the fruits must also be restored; for the praetor seeks to place everything in the same position as if no alienation had occurred. This is not unjust, since the term *restituas*, used here by the praetor, has its fullest meaning and includes restoration of the fruits).

⁹ Girard, *Manuel élémentaire de droit romain*, 456n2.

¹⁰ Hanga, *Drept privat roman*, 404; Antonio Guarino, *Diritto privato romano*, 7th ed. (Naples: Jovene, 1984), 896; Molcuț and Oancea, *Drept roman*, 331; Bob-Bocșan, *Manual elementar de drept privat roman*, 294; Aldo Petrucci, *Manuale di diritto privato romano*, 2nd ed. (Turin: Giappichelli, 2022), 340.

¹¹ Gaston May, *Éléments de droit romain à l’usage des étudiants des facultés de droit*, 3rd ed. (Paris: Librairie du Recueil général des lois et des arrêts et du Journal du Palais, L. Larose, 1894), 584; Girard, *Manuel élémentaire de droit romain*, 456–57.

¹² See May, *Éléments de droit romain*, 584; Girard, *Manuel élémentaire de droit romain*, 454–55; Cătuneanu, *Curs elementar de drept roman*, 412; Guarino, *Diritto privato romano*, 896–97; Hanga, *Drept privat roman*, 403; Molcuț and Oancea, *Drept roman*, 331–32; Bob-Bocșan, *Manual elementar de drept privat roman*, 294; Constantin Stoicescu, *Curs elementar de drept roman*, reprint of the 3rd rev. and expanded ed., ed. with an introductory study by Mircea-Dan Bob-Bocșan (Bucharest: Universul Juridic, 2009), 231; W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, 3rd ed., rev. Peter Stein (Cambridge: Cambridge University Press, 1963; repr. with corrections and an addition to the bibliography, 1975), 596; and Alina Monica Axente, *Curs de drept privat roman*, 2nd rev. and expanded ed. (Bucharest: Hamangiu, 2024), 459.

¹³ Ulpian, *Digest* 42.8.6pr.: “*Quod autem, cum possit aliquid quaerere, non id agit, ut adquirat, ad hoc edictum non pertinet. Pertinet enim edictum ad deminuentes patrimonium suum, non ad eos qui id agunt, ne*

Transactions that impoverished the debtor included alienations of his property, whether for consideration or gratuitously, and releases of debt¹⁴;

b) the debtor had to be aware that the act in question, irrespective of its nature, or the omission to perform an act, would render him insolvent (*consilium fraudis*), thereby harming his creditors. The texts mention the release of a pledge, preferential payment to one creditor in order to defraud the others¹⁵, granting his own debtor a defence against the action available against him¹⁶, failure to appear at trial or allowing proceedings to lapse, failure to bring an action against his debtor within the prescribed period, loss through non-use of a usufruct or servitude¹⁷, abandonment of property so that another person might acquire it by occupation¹⁸, or, in the comprehensive terms of the praetor's edict, *quae fraudationis causa gesta erunt*¹⁹, that is, any acts performed in fraud of creditors. A debtor was not regarded as a spendthrift (*decoctor*) or fraudulent debtor (*fraudator*) if a thing had been promised to him conditionally and he did not fulfil the condition²⁰, or if he disclaimed a testamentary or *ab intestat* inheritance²¹ or refused a legacy²²;

c) the (fraudulent) act had to cause loss to the creditors by rendering the debtor insolvent and thus preventing the satisfaction, in whole or in part, of their claims against him. As has been observed, *eventus damni* was evidenced by *missio in possessionem*, *missio in bona rei servandae causa*²³, which means that the fraud became operative only when the creditors, having failed to receive the payments due, commenced enforcement. The action was not available where the debtor, before incurring new obligations towards other creditors, had satisfied the earlier creditors whom he had intended to defraud. Where, however, an impecunious debtor incurred new debts in order to discharge the old ones, the representative of the later creditors could bring the action²⁴;

d) the third-party acquirer had to participate in the fraud, knowing that the transaction concluded with him had created or aggravated the debtor's insolvency²⁵. This requirement was examined only in relation to a third-party acquirer for consideration,

locupletentur."

¹⁴ Ulpian, *Digest* 42.8.1.2: "Sive ergo rem alienavit sive acceptilatione vel pacto aliquem liberavit."

¹⁵ Ulpian, *Digest* 42.8.2: "Et si pignora liberet vel quem alium in fraudem creditorum praeponat."

¹⁶ Ulpian, *Digest* 42.8.3pr.: "Vel ei praeiit exceptionem."

¹⁷ Ulpian, *Digest* 42.8.3.1: "Verum etiam si forte data opera ad iudicium non adfuit vel litem mori patiat vel a debitore non petit, ut tempore liberetur, aut usum fructum vel servitutem amittit."

¹⁸ Gaius, *Digest* 42.8.5: "Sed et si rem suam pro derelicto habuerit, ut quis eam suam faciat."

¹⁹ Ulpian, *Digest* 42.8.1pr.

²⁰ Ulpian, *Digest* 42.8.6.1: "Unde si quis ideo condicioni non paret, ne committatur stipulatio, in ea condicione est, ne faciat huic edicto locum."

²¹ Ulpian, *Digest* 42.8.6.2: "Proinde et qui repudiavit hereditatem vel legitimam vel testamentariam."

²² Ulpian, *Digest* 42.8.6.4: "Sed et illud probandum, si legatum repudiavit, cessare edictum."

²³ Girard, *Manuel élémentaire de droit romain*, 454.

²⁴ Ulpian, *Digest* 42.8.10.1: "Ita demum revocatur, quod fraudandorum creditorum causa factum est, si eventum fraudis habuit, scilicet si hi creditores, quorum fraudandorum causa fecit, bona ipsius vendiderunt. Ceterum si illos dimisit, quorum fraudandorum causa fecit, et alios sortitus est, si quidem simpliciter dimissis prioribus, quos fraudare voluit, alios postea sortitus est, cessat revocatio: si autem horum pecunia, quos fraudare noluit, priores dimisit, quos fraudare voluit, Marcellus dicit revocationi locum fore. Secundum hanc distinctionem et ab imperatore Severo et Antonino rescriptum est eoque iure utimur."

²⁵ Ulpian, *Digest* 42.8.10pr.: "Ait praetor: 'Quae Lucius Titius fraudandi causa sciente te in bonis, quibus de ea re agitur, fecit: ea illis, si eo nomine, quo de agitur, actio ei ex edicto meo competere esse oportet, ei, si non plus quam annus est, cum de ea re, qua de agitur, experiundi potestas est, restituas.'"

who sought to avoid a loss. Since a gratuitous acquirer sought to retain a gain, his good faith could not prevent the Paulian action from being allowed if all the other conditions were met; it merely limited the effects of the action, in that he was required to make restitution only to the extent of his enrichment, unlike a bad-faith acquirer, who was liable to compensate the loss in full. Accordingly, the third party's participation in the fraud did not have to be proved where the creditors sought to avoid gratuitous transactions.

D. The *actio Pauliana* was brought on behalf of the creditors participating in the *venditio bonorum*, by the *curator bonorum*²⁶ and benefited all creditors, whether their claims arose before or after the fraudulent transaction²⁷. It had to be exercised within one year of the *venditio bonorum*²⁸. Since the fraud could not be perceived before the *missio in bona* and, provided that fraud existed, the action was granted not to any individual creditor but to the *curator bonorum*, we disagree with the view²⁹ that the action expired one year after the harmful transaction.

The third party was the defendant, although the debtor could also be joined in the proceedings. According to one view³⁰, where property had been alienated, the action also lay against subsequent acquirers. According to another author³¹, the *actio Pauliana* could be brought only against the immediate third-party acquirer.

E. As regards its effects, since the *actio Pauliana* was an arbitrary action, the defendant was ordered to pay a sum of money only in the alternative, if he failed to comply with the judge's order. That order could require the third party to restore ownership of the fraudulently alienated asset together with all its accessories³², to release the debtor from an obligation contracted in fraud of creditors, or to reinstate debts that had been released³³.

2. The Paulian action under the Romanian Civil Code of 2009

A. Unlike the Civil Code of 1864, which, following the model of former Article 1167(1) of the French Civil Code of 1804³⁴, devoted a single but comprehensive provision, Article 975, to the Paulian action, according to which *they - the creditors (emphasis added) - may likewise, in their own name, challenge fraudulent acts performed by the debtor to the detriment of their rights*, the matter is now governed by Articles 1562-1565 of the Civil Code of 2009.

The first paragraph of Article 1562 of the Civil Code indicates that the Paulian action is a legal remedy for the preservation of the creditor's right³⁵ - and therefore

²⁶ Ulpian, *Digest* 42.8.1pr.: “*Ait praetor: ‘Quae fraudationis causa gesta erunt cum eo, qui fraudem non ignoraverit, de his curatori bonorum vel ei, cui de ea re actionem dare oportebit, intra annum, quo experiundi potestas fuerit, actionem dabo. Idque etiam adversus ipsum, qui fraudem fecit, servabo.’*”

²⁷ Girard, *Manuel élémentaire de droit romain*, 458.

²⁸ May, *Éléments de droit romain*, 585.

²⁹ Guarino, *Diritto privato romano*, 897.

³⁰ Girard, *Manuel élémentaire de droit romain*, 455n5, 458.

³¹ Guarino, *Diritto privato romano*, 897.

³² Justinian, *Digest* 22.1.38.4.

³³ May, *Éléments de droit romain*, 585.

³⁴ France, *Code civil des Français* (1804), former art. 1167(1): “Ils peuvent aussi, en leur nom personnel, attaquer les actes faits par leur débiteur en fraude de leurs droits.”

³⁵ The provisions on the Paulian action appear in Section 3, inaccurately entitled “The Revocatory Action”

precedes the use of one of the remedies recognised by law for its enforcement - through which the creditor may seek and obtain a declaration that the juridical act or acts concluded by the debtor in fraud of the creditor's rights are unenforceable against that creditor.

The same provision shows that the action may be brought by any creditor, whether unsecured or the beneficiary of any form of security, against any debtor and third-party acquirer, including a subsequent acquirer, subject to the exceptions arising from acts that fall outside the scope of the rules governing the Paulian action. At the same time, according to a decision in an individual case, *all the conditions governing the revocatory action arising from the statutory provisions cited above must be assessed by reference to the person who is the obligor in the obligation relationship, one of those conditions being the existence of a certain claim held by the claimant creditor against its debtor. In the case of successive sales of the same immovable property, the existence of a claim against the seller under the first contract does not entail fulfilment of that condition in relation to the buyer under that contract, who is the seller under the second contract. Thus, the seller under the second, challenged contract must have been the claimant's debtor and, by concluding the sale, must have created or aggravated his insolvency; these are distinct conditions that must be satisfied for the Paulian action to be allowed*³⁶.

B. All juridical acts (but not juridical facts *stricto sensu*) may be declared unenforceable through the Paulian action, including contracts for consideration and payments made in performance of such contracts, provided that the third party participated in the fraud [Article 1562(2) Civil Code], acts by which the debtor incurs new obligations, and even a judicial decision³⁷. Outside the scope of the Paulian action are acts concerning non-patrimonial rights (e.g. marriage and adoption), patrimonial rights whose acquisition and exercise require a personal assessment by the debtor (e.g. refusal to seek revocation of a gift for ingratitude), and juridical acts relating to property or income that is not subject to enforcement (e.g. an express or implied waiver of the right to seek an increase in maintenance)³⁸.

C. The Paulian action is a personal action subject to a limitation period of one year from the date on which the creditor knew or ought to have known of the loss resulting from the challenged act. Article 1564 applies whenever a special rule applies [such as Article 1122(2), which establishes a three-month period]. The supreme court recently held that, *where immovable property is alienated by authenticated instruments,*

(because its effect is not revocation of the challenged act but its unenforceability against the creditor), of Chapter III, "Means of Protecting the Creditor's Rights," within Title V, "Performance of Obligations," Book V, "On Obligations," of the Romanian Civil Code of 2009. See Romania, *Civil Code*, Law no. 287/2009, republished in *Monitorul Oficial* no. 505 (July 15, 2011), bk. V, tit. V, chap. III, sec. 3.

³⁶ High Court of Cassation and Justice (Romania), First Civil Division, Decision no. 463/2025, February 25, 2025, Lege5.ro, accessed July 30, 2026, <https://lege5.ro/Gratuit/ge3teobsgq2ti/decizia-rezumata-nr-463-2025-actiune-in-constatarea-inopozabilitatii-unor-contracte-de-vanzare-cumparare-incheiate-succesiv-cu-privire-la-acelasi-imobil-inexistenta-raportului-obligational-intre-cred>.

³⁷ Liviu Pop, *Tratat de drept civil. Obligațiile*, vol. 1, *Regimul juridic general sau Ființa obligațiilor civile* (Bucharest: C.H. Beck, 2006), 383–86.

³⁸ Corneliu Bîrsan, in Constantin Stătescu and Corneliu Bîrsan, *Drept civil. Teoria generală a obligațiilor*, 9th rev. and expanded ed. (Bucharest: Hamangiu, 2008), 356; Stelian Ioan Vidu, in Liviu Pop, Ionuț-Florin Popa, and Stelian Ioan Vidu, *Drept civil. Obligațiile*, 2nd rev. and expanded ed. (Bucharest: Universul Juridic, 2020), 598.

the limitation period begins to run on completion of the publicity formalities - that being the point at which the creditor "ought to have known" of the alienation giving rise to the loss suffered and for which the creditor seeks redress by bringing the Paulian action³⁹.

D. For the Paulian action to be allowed, the following four conditions must be satisfied:

a) the creditor's claim need only be certain on the date on which the application is lodged (Article 1563 Civil Code). The claim need not be liquid or due and payable for the Paulian action to be brought⁴⁰;

b) the debtor must have concluded a juridical act that causes loss to the creditor [Article 1562(1) Civil Code]. Nevertheless, the creditor may not challenge a payment made by the debtor to another creditor or an act by which the debtor refuses to enrich himself⁴¹. A fraudulent disclaimer of a beneficial inheritance will, however, be sanctioned by the Paulian action [Article 1122 Civil Code];

c) the debtor must have acted fraudulently [Article 1562(1) Civil Code], a requirement that is not confined to an intention to harm the creditor. It is satisfied whenever the debtor knew that, by issuing or, as the case may be, concluding the challenged act, he was creating or aggravating his insolvency⁴². The creditor bears the burden of proving the fraud. The courts have held that *the requirements concerning the debtor's fraud and the third party's fraud in relation to the revocatory action have a broader meaning, encompassing not only their direct intention to harm the creditor but also mere knowledge that the debtor is causing or aggravating his insolvency. It is therefore unnecessary to prove that the debtor and the third party had the direct intention to defraud the creditor's interests. Accordingly, the fact that the third-party acquirer knew that the debtor owed sums of money to the creditor (because the acquirer had personally received certain sums that were also used to finance the activity of a company of which he was the sole shareholder and director), the fact that, by alienating his only immovable property one week before the claim fell due, the debtor accepted that he would render himself insolvent, thereby preventing enforcement of the creditor's claim, and the existence of a cohabiting relationship between the parties to the contract for the sale of the immovable property are capable of proving both the debtor's fraud and the third party's participation in that fraud⁴³;*

d) the third-party acquirer (for consideration) must have participated in the fraud [Article 1562(2) Civil Code], which must likewise be proved by the creditor. This condition does not apply where the challenged act is gratuitous.

E. When the Paulian action is allowed, the challenged act becomes unenforceable against the claimant creditor, who may disregard it and may therefore

³⁹ High Court of Cassation and Justice (Romania), Second Civil Division, Decision no. 624/2022, March 16, 2022, accessed July 30, 2026, <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=193859>.

⁴⁰ Cristina Elisabeta Zamșa, in Flavius-Antoniou Baias, Eugen Chelaru, Rodica Constantinovici, and Ioan Macovei, eds., *Noul Cod civil. Comentariu pe articole*, 3rd rev. and expanded ed. (Bucharest: C.H. Beck, 2021), 1924.

⁴¹ Bîrsan, in Stătescu and Bîrsan, *Drept civil. Teoria generală a obligațiilor*, 356.

⁴² Vidu, in Pop, Popa, and Vidu, *Drept civil. Obligațiile*, 603.

⁴³ High Court of Cassation and Justice (Romania), First Civil Division, Decision no. 365/2020, February 12, 2020, *Lege5.ro*, accessed July 30, 2026, <https://lege5.ro/Gratuit/ge3tanzugmydq/decizia-nr-365-2020-contr-act-de-vanzare-cumparare-actiune-pauliana-frauda-debitorului-complicitatea-la-frauda-a-tertului-dobandit-or>.

proceed against the property and sums of money to which it related as though the rights over them had never left the debtor's estate. As between the parties, the fraudulent act continues to produce its effects.

To facilitate the enforcement of the creditor's rights, Article 1565(2) of the Civil Code provides that the asset is to be frozen from the delivery of the judgment allowing the action until completion of the enforcement of the claim for whose preservation the action was brought. The same effect benefits intervening creditors (if the conditions of the Paulian action are satisfied in relation to them), but not creditors who neither brought the action nor intervened in the proceedings [Article 1565(1) Civil Code].

If the third-party acquirer of the asset that formed the subject matter of the act declared unenforceable elects to retain it, the acquirer owes the creditor an amount corresponding to the loss caused by the conclusion of that act.

3. A brief comparison between the *actio Pauliana* and the action to have a fraudulent act declared unenforceable. Conclusions

It is readily apparent from the foregoing how closely the *actio Pauliana* resembles the action now available to a creditor harmed by fraudulent acts concluded by the debtor. This remedy was, in practical terms, incorporated almost in its entirety into the Romanian Civil Code of 2009. The action no longer has the collective character that it possessed in Roman law, when it was brought by the *curator bonorum* and benefited all the creditors participating in enforcement against the debtor through *venditio bonorum*. Today, any creditor in respect of whom the conditions of the Paulian action are satisfied may seek a declaration that the act concluded by the debtor in fraud of that creditor's rights is unenforceable. Only the claimant creditor benefits from the action, whereas the act continues to produce its effects in relation to all other creditors who have suffered loss and as between the parties to the act.

As regards their similarities, the Roman institution and its modern counterpart share a delictual foundation, both arising from the debtor's fraud.

Each has a broad scope, as shown by the comprehensive terms of the edict that introduced the Roman action - *quae fraudationis causa gesta erunt* - and by the wording of Article 1562(1) of the Civil Code - *acts concluded by the debtor in fraud of the creditor's rights*.

Nor do the conditions for bringing the two actions differ: the same subjective and material elements must be established in order to protect the creditors' interests (the debtor's fraud, embodied in an act by which the debtor creates or aggravates his insolvency and thereby causes loss to the creditor).

The Paulian action remains a personal action and is still subject to a one-year limitation period, although that period no longer runs from the *venditio bonorum*, but from the date on which the creditor knew or ought to have known of the loss resulting from the challenged act.

In terms of its object and purpose, the action to have the fraudulent act declared unenforceable produces the same result as the *actio Pauliana*. The latter, it should be recalled, was an arbitrarian action and therefore enabled the judge to order restitution in kind, a remedy now generally available in civil procedure.

Thus, the problem of fraud against creditors, which is no less common today

than it was in the past, found its solution, like many other problems, in Roman law - more precisely, in the praetor's edict. Its provisions, subtly interpreted by the jurists, have been received into contemporary law without - and this is the remarkable point - requiring substantive amendment. This is why looking to the past can so often inspire solutions to problems arising in the present.

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