4.1 Introduction

Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.¹ These are different from remedies in contract or in tort. Under the English Law they now fall within a distinct third category of restitution.²

A quasi contract belongs to an entirely different legal category, having nothing to do with genuine contracts, express or implied. These are a heterogeneous collection of cases having little in common than the fact that one person is entitled to recover money or property from the other in order that a just result should be reached. Such a right does not depend upon agreement or promise.

A contract implied in law or a quasi contract is not a real contract or as it is called, a consensual contract. A quasi-contractual cause of action involves an alleged promise to pay, which is purely fictitious. This promise is imposed by implication of law, apart from and without regard to the probable intention of the parties, and sometimes even against the clear expression of dissent. Strictly these ‘constructive contracts’ are not true contracts at all, since the essential element of consent is absent. The expression quasi-contract is truly a misnomer; for it has little or no affinity with the contract. The Roman lawyers explained these as misfits. Justinian refers to ‘those obligations which do not originate, properly speaking in contract but, which as they do not arise from a

¹ Fibrosa Spolka Akeyjna v. Fairbairn Lawson Combe Barbour Ltd (1943) AC 32.
² Ibid.
delict, but seem to be quasi-contractual.’ This Act has avoided the expression, and simply calls these relations ‘certain relations resembling those created by contract.’ Such ‘constructive contracts’ do not have any real similarity to terms implied into contract by law; the latter are only implied into an actual contract brought into existence by the ordinary principles for formation of agreements.

In such cases the liability is said to exist independent of the agreement, and rests upon the equitable doctrine of unjust enrichment. Quasi contracts give rise to a situation where an obligation or duty is cast upon the parties by law, but not by the terms of the contract to which they have given assent.³ Quasi contracts or restitution has been placed as a third category of law not founded upon contract or tort.⁴

4.2 Theoretical Bases of Quasi-Contractual Liability

The two main theoretical bases of quasi-contractual liability are: (i) implied contract; and (ii) unjust enrichment

4.2.1 Implied Contract

These causes of action being based on the common remedy of indebitatus assumpsit, the courts treated the alleged promise to pay as purely fictitious. The promise was imposed by law. As was stated:

“... it was necessary to create a fictitious contract: for there was no action possible other than debt or assumpsit on the one side and action for damages for tort on the other. The fiction was so obvious that in some cases the judge created a fanciful relation between the plaintiff and the defendant... The law, in order to do justice, imputed to the wrongdoer a promise which alone as forms of an action then existed could give the injured person a reasonable remedy. These fantastic resemblances of contracts invented in order to meet requirements of the law as to forms of action which

have now disappeared should not in these days be allowed to affect actual rights.\textsuperscript{5}

The implied contract theory found judicial support,\textsuperscript{6} but was also criticized,\textsuperscript{7} until it was finally rejected in *Westdeutsche Landesbank Girozentrale v. Islington London Borough Council*.\textsuperscript{8}

### 4.2.2 Unjust Enrichment

The view that quasi-contractual claims are based on unjust enrichment also found sound support.\textsuperscript{9} It is now also recognized as the basis of restitutionary obligations under the English Law.

### 4.3 Quasi-Contracts under English Law

The variety of quasi-contractual obligations recognized by English Law may be noted below:

### 4.4 Payments to the defendant’s use

Two principles seem to govern this kind of quasi-contractual liability. One of them is that the payment should have been made under pressure and not voluntarily and the other is that the defendant should have been bound to pay and has been relieved of his liability by the payment made by the plaintiff.

An expenditure or payment made purely voluntarily will not do. If, for example, a person pays premiums due upon the policy of another without his request and without any compulsion, he cannot recover.\textsuperscript{10} Similarly, where a municipal corporation, having no legal liability to do so, carried out repairs of a canal bridge, which it was the obligation of the canal authority to maintain, the corporation could not recover, although the bridge was, for want of repair, endangering the road and although the corporation had without success

\textsuperscript{5} United Australia Ltd. v. Barclays Bank Ltd. (1941) 1 AC 1 at pp. 27-29.

\textsuperscript{6} Holt v. Markham (1923) 1 KB 504, (1922) All ER Rep 134.

\textsuperscript{7} Re Rhodes, Rhodes v. Rhodes (1890) 44 Ch D 94, 105.

\textsuperscript{8} (1996) AC 669, (1966) 2 All ER 961.

\textsuperscript{9} Brooks Wharf and Bull Wharf Ltd v. Goodman Brothers (1937) 1 KB 534.

\textsuperscript{10} Falcke v. Scottish Imperial Insurance Co. (1886) 34 Ch D 234.
requested the defendant to carry out the repairs. They were still volunteers.\textsuperscript{11} There was no legal compulsion on them to carry out the repairs. The only compulsion was the damage being done to the road and the expenditure made by them in protecting the road may give remedy under some other principle but definitely not under quasi-contract.

The kind of compulsion or pressure that the law recognizes for the purposes of this remedy is evidenced by \textit{Exall v. Partridge}.\textsuperscript{12} Here the plaintiff had left his carriage upon the premises in which the defendant was living as a tenant. The landlord lawfully seized all the goods on the premises including the carriage for non-payment of rent and would have sold them in execution of his claim. The plaintiff paid the outstanding rent to get back his carriage and then sued the defendant for the amount. He was held entitled to it.

Another example is \textit{Brook’s Wharf & Bull Wharf Ltd v. Goodman Brothers}.\textsuperscript{13} This was a case in which the plaintiffs, who were warehousemen, had taken into their bonded warehouse furs which were imported and were liable to duty. A man keeps a bonded warehouse on the terms that he will be responsible to the Commissioner of Customs and Excise if those goods go out of his bonded warehouse before the duties has been paid. The defendants had imported skins and put them in the plaintiff’s warehouse. The goods were stolen from the warehouse and the Commissioner recovered the duty from the warehousemen. “They had no answer, they had held the bonded goods, the bonded goods had left their warehouse and could be made available by the thieves on the home market, and the bonded warehousemen had to pay. They were held entitled to recover from the importers the amount which they had paid because it was primarily the importer’s duty to have paid the import duties as soon as the goods were imported into this country.”

\textsuperscript{11} Macelsfield Corpn v. Great Central Railway, (1911) 2 KB 528.
\textsuperscript{12} (1799) 8 Term Rep 308.
\textsuperscript{13} (1937) 1 KB 534.
This action were restated by Lynskey J in *Monmouthshire County Council v. Smith.*

“The essence of the rule is that there must be a common liability to pay money to a particular person; that the plaintiff has been compelled to pay it by law; that the defendant is liable to pay that money; and that the defendant’s debt or liability has been discharged by the plaintiff’s payment.”

This statement was affirmed by the Court of Appeal. The appeal was heard along with *Metropolitan Police District Receiver v. Croydon Corpn.* The two appeals raised exactly the same point. In each case a police constable was injured through the negligence of the defendants and had to remain off duty during the period of illness and the police authorities had under the duties to pay him off-duty wages. The action in each case was to recover the amount so paid away as off-duty wages. The contention was that if the police authorities had not paid them, the constables could have recovered from the defendants the loss of wages and that the liability of the defendants was thereby reduced. But the Court of Appeal did not allow any remedy under quasi-contract. In each case the defendant was liable to pay compensation to the injured constable and the liability to compensation did not include loss of wages because the constable had not suffered that loss. Thus the payment by the plaintiff did not relieve the defendant of any liability.

### 4.5 Payments made under Mistake of Fact

Payments made under a mistake of fact can be recovered provided that the party paying would have been liable to pay if the mistaken fact were true. Thus where money was paid under a life insurance policy which to the knowledge of the company had lapsed, but the fact of lapse having been forgotten at the moment. The company was held entitled to recover back the money. Parke B pointing out that it would be against conscience for a person

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15 Ibid.
16 *Kelly v Solary,* (1841) 9 M & W 54.
receiving such payment to retain it. The principle of this case was applied subsequently to a case where payment was made under a policy of marine insurance under the mistaken knowledge that the cargo of lemons had perished whereas in fact it was only sold en route, the Privy Council held that the money was recoverable.17

One of the essential conditions of this action is that “the mistake must be as to a fact which, if true, would make the person paying liable to pay the money”. This suggestion was made in Aiken v. Short18 and was approved by the Court of Appeal in Morgan v. Ashcroft.19 The facts as summarized by the court were as follows:

The respondent is a book-maker. The plaintiff is a publican who was a regular customer of the respondent for betting transactions. The nature of the mistakes which led to the alleged overpayment of about £24 upon which the action was brought, was proved in evidence to have been a clerical error by the respondent’s clerk which led her to give the appellant credit for the sum of about £24 twice over; thus causing the respondent to pay to the appellant £24 too much.

The action was to recover back the overpayment, and it was lost on two grounds. Firstly, the court was forbidden by the Gaining Act, 1845, from looking into betting transactions and, secondly, even if the mistaken over credit were taken to be true. There would have been no liability to pay.

In the subsequent case of Lamer v. London County Council20 the Court of Appeal relaxed the principle to this extent that a belief that there is a moral liability to pay is sufficient to prevent the payment from being regarded as purely voluntary. In that case an employer whose servants were called up for military service proposed to pay them the difference between their pay and

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18 (1856) 1 H & N 210, 215.
19 (1938) 1 KB 49; (1937) 3 All ER 92. CA.
20 (1949) 2 KB 683.
the pay given to them by the military authorities, The plaintiff to whom such
difference had to be paid did not inform the employer of the difference and
consequently he was overpaid. When he came back the employer began to
deduct from his pay the extra payment which he tried to stop. But the
employer was allowed to recover the extra payment. The scheme was no
doubt voluntary, but once announced, the payments made under it could not
be regarded as voluntary.

It is also necessary for this kind of action to succeed that the mistake must he
one of fact and not of law. The distinction may often be difficult to draw and
the rule may for this reason have often been criticized, it is still a part of the
law. Thus, payment of extra rent made under an agreement to increase rent
made in violation of a Rent Control Act could not be recovered.21 Similarly,
the duty paid on an item which the House of Lords had held in another case to
be riot dutiable, could not be recovered.22 So was true of an extra gratuity paid
on a mistaken view of the relevant regulations.23

Where a private document has been construed by a court of law, that
interpretation becomes a part of the law. Thus, where an undertaking in a
separation deed to pay the wife an annual sum of money “free of any
deductions whatever” had already been construed as excluding deduction for
income tax, a payment in ignorance of this interpretation without deducting
income tax could not he recovered.24

4.6 Payments made under an Ineffective Contract

Three kinds of situation are generally considered under this head, namely,
total failure of consideration, money paid under a void contract and money
paid under an illegal contract. The effects of void and illegal contracts have
already been considered; only the effect of total failure of consideration will

21 Sharp Bros & Knight v. Chant, (1917) 1 KB 771, CA.
23 Holt v. Markham, (1923) 1 KB 504.
24 Ord v. Ord., (1923) 2 KB 432.
be taken up here. Where one of the parties to a contract has paid money in the performance of his part but the other party fails to do his part, the former has an option, namely, either to sue the other for the breach of contract or to treat the contract as at an end and recover back his money under quasi-contract. Quasi-contractual remedy arises when there has been a total failure of consideration as opposed to partial. For example, where a shareholder of a company transferred his shares to the plaintiff for which the price was paid, but the company on account of certain conduct on the part of the transferor himself refused to register the transfer of his shares, this was held to be a total failure of consideration enabling the plaintiff to recover back his price.\textsuperscript{25}

Other instances can be seen in transactions relating to sale of goods. If the buyer has to return the goods on account of there being no title on the part of the seller to sell, the buyer can recover the whole of his price without any deduction for use value, for there is, in such cases, a total and not a partial failure of consideration.\textsuperscript{26} The same principle shall apply where the goods have been taken under hire-purchase and the buyer had to return them to the true owner.\textsuperscript{27}

Partial failure of consideration will not have the same effect. Thus, where a boy was registered as an apprentice with a watchmaker for a period of six years on payment of a premium and the master died when the boy had learned only for one year, he could not recover any part of his premium, there being only a partial failure of consideration.\textsuperscript{28} The same result followed where a party occupied premises on paying the agreed rent but left soon thereafter on account of the landlord’s failure to carry out his part of the promise, he could not recover back the rent.\textsuperscript{29}

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\textsuperscript{25} Wilkinson v. Lloyd, (1845) 7 QB 27: 4 LT (OS) 432
\textsuperscript{26} Rawland v. Divall, (1923) 2 KB 500.
\textsuperscript{27} Warman v. Southern Counties Car Finance Corp. Ltd., (1949) 2 KB 516.
\textsuperscript{28} Whincup v. Hughes, (1871) LR 6 CP 78.
\textsuperscript{29} Hunt v. Silk, (1804) 5 East 449.
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4.7 **Payments made under compulsion**

Where the owner of a market realized tolls from a shopkeeper by seizing his goods and it being subsequently held that he had no such authority, the shopkeeper was allowed to reclaim the toll money.\(^{30}\) But where any such fee or toll is paid without improper pressure or compulsion, there would be no right of recovery.\(^{31}\) So also where the payment is in response to summons issued by a court of law.\(^{32}\) Payments extorted under colour of authority which is unfounded are recoverable.\(^{33}\)

4.8 **Quantum Meruit**

Where a party has in the performance of his contract done some work or rendered some service and the further performance has been made useless by the other party, he may recover reasonable compensation for the work or service. *Plinche v. Colburn*\(^{34}\) is an authority for this principle.

The plaintiff was the author of several dramatic entertainments. He was engaged by the defendants, who were the publishers of a work called “The Juvenile Library” to write for that work an article to illustrate the history of armour and costumes from the earliest times, for which he was to be paid 100 guineas. The plaintiff made various drawings and prepared a considerable portion of manuscript when the defendants discontinued the Juvenile Library. The plaintiff claimed a sum of 50 guineas for the part which he had prepared, and the trouble he had taken in the business. He was held entitled to it.

Similarly, where a printer, having printed most of the work, refused to complete it because the dedication was libellous, he was held entitled to recover on *quantum meruit*.\(^{35}\) A similar recovery is allowed where a person

\(^{30}\) Maskell v. Harner, (1915) 3 KB 106, CA.
\(^{31}\) Twyford v. Manchester Corp., (1946) 1 Ch 236.
\(^{32}\) Moore v. Vestry of Fulham, (1895) 1 QB 399.
\(^{33}\) Newdigate v. Davy, (1694) 1 Lord Ragn 742.
\(^{34}\) (1831) 5 C & P 58: 1 Moo & S 51.
has rendered services under a supposed contract which turns out to be a nullity. *Craven-Ellis v. Canons Ltd*, 36 is an authority for this.

The plaintiff was appointed managing director of a company. The appointment was made by the other directors who were disqualified by reason of having not taken their qualification shares. The plaintiff also did not take his qualification shares. But he continued to act as managing director and sued the company for his agreed remuneration or for a reasonable remuneration on the basis of *quantum meruit*.

The Court of Appeal rejected the claim for the agreed remuneration, the contract of appointment being void, but allowed him to recover on the basis of *quantum meruit*.

Greeh LJ emphasized that a claim of this kind does not depend upon implied contract arising by virtue of the services having been accepted or upon inference of law, but upon a rule of law.

“The obligation to pay reasonable remuneration for the work done when there is no binding contract between the parties is imposed by a rule of law, and not by an inference of fact arising from the acceptance of services or goods. It is one of the cases which are referred to in books on contract as obligations arising quasi ex contractu of which a well-known instance is a claim based on money which had been received.” 37

Though the remedy is independent of contract, but the contract, if any, shall nor be wholly irrelevant. Thus where a ship was delivered for repairs and the contractor used more expensive material than that authorized by the contract, he could not recover under the contract because he had not carried it out precisely, nor under *quasi-contract*, because the ship-owner had no chance to reject the expensive material. He could not have rejected the ship after it was

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36 (1936) 2 KB 403; (1936) 2 All ER 1066, CA.
already repaired and the mere taking of his own property was not the same thing as acquiescence in or acceptance of the work done.\textsuperscript{38}

Where adequate relief is available under the contract itself, the court may not provide any relief under quasi-contract.

In the course of the performance of a contract to construct a power dam, the owner was in several important respects in breach of the contract. The breach was so fundamental as to justify termination of the contract. However, the contractor continued to work and completed the project. He claimed compensation for the owner’s breach on \textit{quantum meruit} basis.

It was held that the contractor, having continued to work the contract in the face of the owner’s breach, was entitled to recover under the contract. Since the contractor had completed the contract, and had adequate remedy under the contract, there was no need for law to fashion a restitutionary remedy nor would it be right for the contractor to obtain a possibly higher rate of compensation than that under the contract.\textsuperscript{39}

As aptly remarked by Anson,\textsuperscript{40} “Circumstances must occur under any system of law in which it becomes necessary to hold one person to be accountable to another, without any agreement on the part of former to be so accountable, on the ground that otherwise he would be retaining money or some other benefit which come into his hands to which the law regards the other person as better entitled, or on the ground that without such accountability the other would unjustly suffer loss. The law of quasi-contract exists to provide remedies in circumstances of this kind. Thus “the basis of quasi-contractual liability is unjust enrichment and the liability arises by implications of law, and not out of any agreement as in the case of contract. Hence, apparently the term quasi-contract is rather misleading and is apt to confuse.”\textsuperscript{41}

\textsuperscript{38} Farman & Co Ltd v. The Liddesdale, (1900) AC 190 PC.
\textsuperscript{39} Morrison Knudsen & Co v. B.C. Hydro and Power Authority, (1978) 85 DLR (3rd) 186
\textsuperscript{40} Anson’s \textit{Law of Contract}, 23\textsuperscript{rd} edn 1971 at p. 589.
Anson has written that the term “Quasi-contract” is not a happy term.” Supra note 40. Sir Frederick Pollock has preferred the term ‘constructive contract’. Id at p. 11. Pollock and Mulla have also remarked, ‘The expression quasi-contract is a misnomer. It has little or no affinity with contract.” As pointed out by another eminent writer, ‘Quasi-contract’ means ‘like contract’. It will not be like a formal contract with a promise, acceptance and reduced to writing. You may read an implied contract, in a given set of circumstances and where it is to advance the ends of justice, a legal theory propounds that it is ‘a relation resembling those created by contract.’

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42 Supra note 40.
43 Id at p. 11.
44 Indian Contract Act and Specific Relief Act, 9th edn, 1972 at p. 433.