CHAPTER-2

THE POSITION UNDER THE ENGLISH LAW

The concept of quasi contract was for the first time evolved on the soil of England. It was given recognition especially, in those areas of relations which are though not created by contract but in reality are similar to those which spring out of contract. The edifice of a quasi contract is the prevention of unjust enrichment. Sans a quasi contract gain (i.e. unjust enrichment) would be derived without paying anything in lieu thereof at the cost of another innocent person who has been the source of providing such gain voluntarily with intention to take some consideration for it. Consequently, such gain would be derived without any recognition of law causing injustice to concerned individual and society as well.

Though no precise definition of quasi contract can be found under the English Law yet for convenience it has been considered to signify, for example an obligation to pay a sum of money to another person by way of restitution which is imposed by law. Such obligation is independent of consent of parties and is founded on unjust enrichment. It may result from a void contract or may result from a tort\(^1\).

Such a monetary claim is sometimes called as a claim for restitution which cannot be strictly called as a claim of damages. For

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\(^1\) John H. Munkman, The Law Of Quasi-Contracts, First Published in 1950, (Sir Isaac Pitman & Sons Ltd. (London)- Publisher), p. 19.
example, such claim can arise when the defendant receives some benefit in consequence of breach of contract which he ought to have returned to the claimant. In the case like the present one, the plaintiff (i.e. the claimant) is not seeking remedy for compensation for breach of contract and for loss suffered by him but he only seeks from the defendant restoration of the benefit which the defendant has unjustly received. Such restoration of benefit by the defendant to the plaintiff depends on the doctrine of unjust enrichment.²

2.1 CLASSIFICATION-

There is no universal method of classifying a quasi contract but in view of logical convenience and recognition provided to classification by the Common Law a quasi contract which is also called as equitable obligation as it is based on equity, a quasi contract can be classified into the following categories³-

1. Obligation to repay money had and received, or cases of restitution.
2. Obligation to repay money paid at the defendant’s request, or cases of reimbursement.
3. Obligation to pay the fair value of goods delivered or services rendered (quantum valebat, or quantum meruit) or cases of recompense for benefits conferred.
4. Obligation to account or money had and received from a third party.

2.1.1 OBLIGATION TO REPAY MONEY HAD AND RECEIVED: CASES OF RESTITUTION

Obligation under this subhead can be examined in the following sub classifications- 1) Payments void ab initio, 2) Payments recoverable on subsequent events and 3) Tracing orders in equity. These can be examined separately.

2.1.1.1 Payments Void Ab Initio

There are certain circumstances in which money paid by the plaintiff to the defendant can be recovered. In other words, where payment made by the plaintiff is void ab initio, he is entitled to recover such money from the defendant under quasi contractual obligation of the defendant. The payment is void ab initio when it is made for example, under mistake of fact, fraud, undue influence, extortion, under pressure of legal proceedings, duress and quasi duress.

- For example, where the plaintiff pays some money to the defendant under mistake, a quasi contract is created between the plaintiff and defendant. As a result of such obligation the defendant is bound to refund the money received to the plaintiff.

To illustrate, the case of *Kelly v. Solari*⁴ may be quoted here. The life policy taken by the Director of an assurance company was lapsed. But this fact was forgotten by the Director and he made the payment or premium. It was observed by the Court that the money so paid could be recovered by the Director howsoever careless he might be. The Court further observed that the knowledge of the fact by the party

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⁴ (1841) 9 M. & W. 54.
making the payment is the knowledge which he had in his mind at the time of making the payment. In the present case, the payment was made upon the supposition that some specific fact was true, though it was not true. The payment was thus made under influence of mistake of fact.

In the present case, Lord Parke, B. observed as follows-

“I think that where money is paid to another under the influence of a mistake, that is upon the supposition that a specific fact is true, which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been known to be untrue, an action will lie to recover it back... It may, generally speaking, be recovered back, however, careless the party paying may have been."

Lord Abinger, C. B. observed-

“I think the knowledge of the fact which disentitles the party from recovering must mean a knowledge existing in the mind at the time of payment."

The aforesaid observations made by their Lordships is of equal importance. However, the opinion of Lord Parke, B. has been treated as guiding source of rules for quasi contract. The crux of these two observations can be summarised in the words that when payment of money by a person has been made under a mistake, he is entitled to recover it from the person to whom he has paid it. The person who has received the money is bound quasi contractually to refund the money.
In *R. E. Jones Ltd. v. Waring & Gillow Ltd.*⁵ a man named Bodenham induced the appellants to believe that he was authorised to act as an agent for negotiating the sale of number of motor cars. Thereby, he wanted to take a cheque of £ 5,000 payable to the respondents as deposit on the sale of motor cars. The cheque was given to him by the appellants believing on his statement. But he handed over the cheque to the respondents not on behalf of the appellants but to clear his own debts on furniture which he had hired from the respondents. It was held by the House of Lords that the appellants were entitled to recover money because they were under mistaken belief that through Bodenham the respondents were offering to sell them motor cars though such belief was not true.

Again, in *Norwich Union Fire Insurance Society Ltd. v. W. H. Price & Sons Ltd.*⁶ the insurers paid money to the insured under belief that the cargo of lemons got damaged due to marine perils while the reality was that the damage was caused due to sale of lemons at cheaper rate. It occurred due to cutting short of voyage. According to insurance policy the money so paid by the insurers could be paid only in case of marine perils and not in other circumstances. The insurers made claim for recovery of such money. The Court held that the money paid in the present case was under misconception of certain fact which turned out to be untrue. Therefore, the plaintiff was entitled to recover the money paid by it to the defendant.

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⁵ (1926) A.C. 670.
⁶ (1934) A.C. 455.
In Anglo-Scottish Beet Sugar Corporation v. Spalding U. D. C.⁷ the rates of supply of water was reduced. This fact was known to one of the agents of the plaintiff company. But another agent was unaware of such change of rates, paid the charges at the old rates. It was observed by the Court that the surplus amount paid by the agent was made under influence of mistake, therefore the plaintiff company was entitled to recover the excess amount of charges paid by its agent.

In Weld-Blundell v. Synott⁸ the first mortgagee of certain property realised his security from the owner and paid the balance to the second mortgagee. Later on, he came to know that he had underestimated the amount of security and thus over paid the second mortgagee. It was observed by the Court that he was entitled to recover the money paid in excess from the mortgagee. The Court said that though the mistake was between first mortgagee and the owner but it affected the payment to the second mortgagee. Therefore, he was entitled to the restitutionary remedy in term of recovery of excess money paid by him.

The aforementioned cases are related to mistake of fact, i.e. payment of money made by one person to another under a mistake of fact that the person making the payment is liable to pay but in reality it happens that either he is not liable to pay at all or he has paid excess money.

However, for a long time it has been the rule that where money has been paid under mistake of law, the recovery of such money was not

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⁷ (1937) 2 K.B. 607.
⁸ (1940) 2 K.B. 107.
effective mere on the ground of mistake of law. For example, in **Bilbie v. Lumley**\(^9\) some money was paid under an insurance policy. It was known to the underwriter (i.e. the insurance company) that certain facts were concealed from the person who paid the money when the policy was taken by him. But the company did not know that such concealment of material facts would amount to a good defence in law to the claim. It was held by the Court that the money was paid voluntarily by the plaintiff with full knowledge of the facts. He was not allowed to recover the money back on the ground of his ignorance of the law. The Court further remarked that every man must be taken to be cognisant of law, otherwise there is no saying to what extent the excuse of ignorance might not be carried. In **Sawyer & Wincent v. Window Brace Ltd.**\(^10\) the Court was of the opinion that voluntary payment of money made by a person under a mistake of law cannot be recovered.

The opinion of the **House of Lords** drawing a distinction between **mistake of fact and mistake of law** expressed in **Cooper v. Phibbs**\(^11\) is worth quoting here. In the instant case, the petitioner had rented a fishery from another person. The petitioner was under mistaken thought that such person was the rightful owner of the fishery. But afterwards, he discovered that he himself was the tenant in fishery according to a private Act of the Parliament. Consequently, he brought action to the Court of Law for cancellation of lease. His action was allowed by the House of Lords and accordingly the lease was cancelled. Explaining the meaning of ‘mistake of law’ Lord Westbury stated that a

\(^9\) (1802) 2 East 469.  
\(^10\) (1943) K.B. 32.  
\(^11\) (1867) L.R. 2 H.L. 149.
mistake of law means a mistake as to general law, the ordinary law of the country and not a mistake as to private rights.

It is submitted that in the case of Cooper v. Phibbs the relief sought by the plaintiff for cancellation of lease was an equitable relief and it was not for repayment of money at the Common Law. In equity relief may be given even in the case of mistake of law. In the present case, the construction of the Act of Parliament made by the House of Lords suggests that there was a mistake of law and even then the relief by cancelling the lease was granted to the plaintiff.

It is further to be noted that where the plaintiff does some act after having full knowledge of all the material documents and he misunderstands the legal effects of such documents, he cannot say in Common Law action that he has acted under influence of mistake of fact. To explain, Re Diplock’s Estate\textsuperscript{12} can be discussed here. In a will bequests to charities were made. The executors paid the bequests. Afterwards, the executors pleaded that they paid the bequests under mistaken belief that the bequests were valid charitable gifts. The Court held that the executors had no right at Common Law to recover the money paid.

It is therefore, obvious that where a person believes that his private right is based on some mistake in the construction of written documents or he is under mistaken belief that for existence of such private right due to application of the general law, his mistake can be treated as a mistake of law. But where the mistake is not related to

\textsuperscript{12} (1947) 1 All E.R. 522.
construction of documents or application of general law, the mistake may be termed as a mistake of fact.

It is pertinent to examine the situation where the plaintiff commits a mistake of fact as well as mistake of law. That is to say, the question may arise as to what would be effect of both mistake of fact and mistake of law committed by the plaintiff upon his claim under a quasi contract. For example, in *Holt v. Markham*\(^\text{13}\) the agents of the Government paid to the defendant (who was an air force officer) higher rate of gratuity than he was legally entitled. They did not have in their mind that the defendant was on the emergency list. They also could not think that under regulations some reduced amount was to be paid because he was on the emergency list. It was held by the Court of Appeal that the excess of money so paid in term of gratuity could not be recovered from the defendant. The Court observed that the plaintiffs could not have in their minds at the time of that the defendant was on emergency list. This fact could not influence them to make the payment while in order to succeed it must be shown that the payment was made under the influence of a mistake as to a specific fact. The Court further observed that the plaintiffs represented to the defendant that the money was of the defendant so they were estopped from denying that the amount paid was correct.

It appears from this case that when there is both mistake of fact and mistake of law in making some payment, the payment so made can be recovered when the mistake of fact is dominant in the mind of person who pays such money.

\(^\text{13}\) (1923) 1 K.B. 504.
It is further to be noted that under mistake when payment is made, it can be recovered only when the **plaintiff had liability to pay**. It means the mistake of the plaintiff must be related to such money **which he was legally bound to pay**. In *Aiken v. Short*\(^{14}\) it was observed by the Court that the plaintiff can enforce his right to recover money paid under a mistake only when the mistake was related to his liability to pay the money. The Court further remarked that in order to entitle a person to recover back money paid under a mistake of fact, the mistake must be as to a fact, if true, would make the person paying liable to pay the money.

*It is worth mentioning that the plaintiff must be liable to pay some money and he can recover the money so paid when he acted under mistaken belief relating to such liability to pay money. However, such situation is a general situation and cannot be said to be the only situation for recovery of money. It is because there may be another situation when the payment is voluntary and made under mistaken belief in which the plaintiff can be held entitled to recover the money.* To illustrate the point *Kelly v. Solari*\(^{15}\) can be cited. It was observed by the Court that where money has been paid under a mistake regarding some specific fact which influenced the payment can be recovered by the plaintiff on the basis of general supposition that the fact was true though it was untrue. Therefore, for example, the plaintiff makes some payment of money voluntarily to a charity or to his friend or near relative and makes the payment to a wrong person under mistake of identity of the person. The plaintiff is entitled to recover the money on the basis of general principle laid down in Kelly v. Solari. It is clear that

\(^{14}\)(1856) 1 H. & N. 210.

\(^{15}\)(1841) 9 M. & W. 54.
the plaintiff can make claim for recovery of such money paid by him under mistake though he has paid the money voluntarily and he did not pay the money because he was legally bound to pay. So, where the money is paid by the plaintiff in discharge of his liability or he pays money voluntarily (i.e. without being liable to pay money to the defendant), he can recover it provided the payment was made by him under influence of mistake. What is necessary is that the mistake must be of a fundamental nature and not of subsidiary nature.

In Morgan v. Ashcroft\textsuperscript{16} the claim of the plaintiff who made over payment could not be allowed by the Court. In that case the plaintiff was a book maker. He had made over payment on bets he filed a suit to recover the extra payment made by him. But his claim was rejected by the Court. The \textit{ratio decidendi} of the case was that the game was not legally valid and debts (bets) were void under law. Therefore, such gaming debts could not be recognised by allowing the claim of the plaintiff.

In Kerrison v. Glyn Mills & Co.\textsuperscript{17} the plaintiff was a banker in Ips Wich. He requested an American Bank to give credit to a mining company which was running its business from Mexico. According to arrangement the understanding was that whenever a draft of the Mexican Company was honoured, the Sterling Pound (popularly known as Pound of U.K. currency) equivalent would be paid to the defendants by the plaintiff. The defendants were English agents of the American Bank. The plaintiff paid £ 500 to the defendants in anticipation of his liabilities. Such payment was a voluntary advance payment. But what happened

\textsuperscript{16} (1938) 1 K.B. 49.  
\textsuperscript{17} (1911) 81 L.J.K.B. 465.
meanwhile was that without knowledge of the plaintiff, the American Bank suspended the payment. The plaintiff brought an action to the Court of Law to recover £ 500 paid by him. The House of Lords allowed the claim and held that the plaintiff was entitled to recover £ 500 as it was valid payment under mistake of some specific fact by him that he was liable to pay the same but in fact he was liable due to suspension of the transaction by the American Bank.

But it is to be noted that where a mistake occurs in a document and it can be rectified, the contract cannot be set aside. For example, in Chart Brook Ltd. v. Persimmon Homes Ltd.\(^\text{18}\) it was held by the House of Lords that where mistake in a document is of such a nature that it can be rectified, the rectification of mistake can be allowed and the contract cannot be set aside. Here this judgment shows that where mistake occurs in a document consisting of a contract and mistake can be rectified, the contract cannot be avoided because such contract can be enforced after rectification of the concerned mistake.

- **DEFENCES**-

It is pertinent to mention that there are two specific defences available to the defendant against plaintiff’s right to recover extra money paid by him under mistake. These are- First Estoppel and secondly, where defendant is an agent and pays the money to his principal.

Where the principle of estoppel can be applied by the defendant against the plaintiff, the claim of the plaintiff to recover over payment under mistake cannot be allowed. For instance, in Deutsche Bank v,
Beriro\textsuperscript{19} the banking agents were interested with a bill of exchange for collection. They represented mistakenly to their clients that the bill had been paid and credited them with the proceeds. Afterwards, they claimed to recover the money when they discovered their mistake. But their claim was rejected on the ground of the principle of estoppel being applicable against them. The Court observed that they could not recover money from the clients because the defence of estoppels pleaded by client against them was sustainable.

It is therefore clear that where the defendant has acted upon representation made by the plaintiff believing the trueness of the statement, the defendant can successfully plead the application of principle of estoppel against the plaintiff when later on the plaintiff says that the statement was made under mistaken belief. That is to say, in the present context if the plaintiff represents to the defendant that money was due to him from the defendant, and the defendant placed his reliance on such representation and spends money, the defendant can plead the estoppels against the plaintiff.

The second defence comes into existence when the defendant is an agent of the principle and he pays money to him. For example, in Continental Caoutchouc \textit{v. Kleinwort}\textsuperscript{20} it was laid down by the Court that it is the clear law that prima facie the person to whom the money has been paid under a mistake of fact is liable to refund it, even though he may have paid it away to third parties in ignorance of the mistake. He has had the benefit of the windfall and must restore it to the true owner. On the other hand, it is equally clear that an intermediary, who has

\textsuperscript{19} (1896) 73 L.T. 669.
\textsuperscript{20} (1904) 90 L.T. 474.
received money for the purpose of handing it onto a third party, and has handed it on, is no longer accountable to the sender. In such case, he is a mere conduit-pipe and has not had the benefit of the windfall.

It is evident from this discussion that where some money has been entrusted to a middle man by a third person to be paid to the principal and the money is actually paid by such middle man to the principal, the third person cannot recover the money so paid from the middle man because he bears no liability in such a case to the third person even though he had given the money to the middle man under mistake.

- Again, where money is paid under fraud, it is recoverable. The remedy for recovery of such money under fraud was initially the action of account. But in the modern age such money can be recovered under law of tort for the tort of deceit and also under quasi contractual obligation. The case of Derry v. Peek\textsuperscript{21} is worth mentioning. However, such payment can also be recovered as a quasi contractual remedy. In Edgington v. Fitzmaurice\textsuperscript{22} it was laid down by the Court that if the false statement of fact actually influenced the plaintiff, the defendants are liable, even though the plaintiff may have been also influenced by other motives.

It is therefore obvious that whereby false representation of some fact, the defendant has influenced the plaintiff and the plaintiff after believing such statement makes some payment, the money so paid is

\textsuperscript{21} (1889) 14 A.C. 337.
\textsuperscript{22} (1883) 29 Ch. D. 459.
recoverable by the plaintiff. The reason is the transaction is void ab initio.

If the fraud is committed by the agent, the principal can be held liable to refund the money under quasi contractual obligation. For example, in *Refuge Assurance Co. Ltd. v. Kett Lewell*\(^\text{23}\) a woman had got certain policy of assurance. She decided to stop to pay the premiums. The agent of the company made a false representation to her that if she continued to pay the premiums for 5 years she would be given a free policy. She did so but the company did not issue a free policy. She brought an action for recovery of the premiums. The Court held that she was entitled to recover the money paid as premiums because the company could not keep the money obtained by it due to fraud committed by its agent.

In *Hughes v. Liverpool Victorial Legal Friendly Society*\(^\text{24}\) the plaintiff took up five insurance policies from the defendants. She had no insurable interest in the policies. The policies were for other persons and were life insurance policies. She made such agreement due to fraudulent misrepresentation of agent of defendants. The agent said that the policies were valid and payment would be made. However, in fact the policies were illegal and void. It was held by the Court that she was entitled to recover all the premiums which she paid in respect of such policies.

- Money paid by plaintiff to defendant under *undue influence* is recoverable. Where for example, gift is made, property is

\(^{23}\) (1909) A.C. 243.

\(^{24}\) (1916) 2 K.B. 482.
transferred or money is paid under undue influence, it can be recovered by the plaintiff.

The cases of undue influence may arise in either of the two situations. First, where some special relationship exist between plaintiff and defendant and secondly, where no special relationship exist between them. The special relationship between whom the general presumption of undue influence may exist is that of doctor and patient, religious guru (advisor) and disciple, advocate and client, guardian and God, trustee and beneficiary, parent and child. These are the most common examples of such fiduciary relationship between whom the person superior in status can be presumed to unduly influence the person who is in a inferior position. However, such presumption can be rebutted by the person in superior position that he has not applied undue influence. It is to be noted that the husband and wife cannot be said to belong to such category of fiduciary relationship. In Inche Noriah v. Shaik Allie Bin Omar\(^\text{25}\) it was held by the Privy Council that the onus to prove that undue influence was not inflicted on the plaintiff lies on the shoulders of the defendant.

Where there is no special relationship between plaintiff and the defendant, the cases of undue influence may also arise. In such case the plaintiff has to prove the existence of undue influence. For example, in Morley v. Loughnan\(^\text{26}\) an epileptic employed the defendant as his companion. On the advice of the defendant the epileptic converted his sect and adopted the sect of the defendant. He was so influenced by the defendant that he authorised the defendant to manage his entire property

\(^{25}\) (1929) A.C. 127.

\(^{26}\) (1893) 1 Ch. 736.
and later on gift was made by the epileptic in favour of the defendant. After the death of epileptic his executors brought an action against the defendant to recover the gift. The action was allowed. The Court observed that despite the fact that there was no special relationship between epileptic and the defendant, undue influence was committed by the defendant in the present case.

In *Royal Bank of Scotland plc v. Etridge* (2)\(^{27}\) clubbing eight appeals the House of Lords held that undue influence is a specie of fraud. The party who has been induced by undue influence while making the transaction can set aside it as a right and seek the restitutionary remedy from the other party.

It is thus clear that on account of undue influence when money is taken by a person from another person, the person who pays such money has restitutionary remedy to recover the money because the contract so made is voidable due to consent of the person paying money being vitiated.

- Likewise, **duress** or **quasi duress** renders the contract voidable when it is inflicted by a party to a contract on the consent of other party. The party who gives consent on account of duress, is not free and the contract is voidable. Therefore, when money is paid by one person to another under duress or quasi duress, he can recover it from the other party as a restitutionary claim or quasi contractual claim.

Until 1976 duress was taken to mean only actual or threatened violence by one person against another.\(^{28}\) For example, when defendant

\(^{27}\) (2001) U.K.H.L. 44.

threatens to beat the plaintiff if he does not give his consent to sell his property, the defendant is applying duress. But after 1976 actual threat or threatened violence **against goods** or the illegal seizure of the goods is included in duress (such threat against goods was previously called as quasi duress). Similarly, **economic duress** also comes within scope of duress. For example, when defendant threatens the plaintiff of serious financial consequences in such a situation that the plaintiff has no option except to make a contract, the duress so applied can be treated as economic duress. It shall defeat the plaintiff’s consent and the plaintiff has restitutionary remedy to recover from the defendant the payment made by him.²⁹

Thus, in modern age duress has been classified into three categories. These are i) **Duress of person**, ii) **Duress of goods**, and iii) **Economic Duress**³⁰. To explain, some decided cases may be quoted. In **Barton v. Armstrong**³¹ it was observed by the Court that where one party gave threat to kill the other party or his close relative, the threat amounts to duress of a person and the contract is vitiated thereby. The party against whom duress is applied must resist the pressure. If he is unable to do so and has no option other than to make the contract under such pressure of duress, he is entitled to the restitutionary relief. It is equally important to note that a threat to bring criminal prosecution e.g. lawful imprisonment is not taken as duress at Common Law but it is

³¹ (1976) A.C. 104.
treated as duress in equity. The contract can be cancelled under equitable rule. Such equitable rule is accepted in present day\textsuperscript{32}.

If duress against goods is applied and it is thereafter that the contract is made, the contract can be set aside. For example, where actual or threatened violence to goods or other property of illegal seizure of goods or other property is activated by one party against the other. The contract cannot be allowed to exist and the party who has fallen victim of such duress of goods has remedy against the other party. In \textit{Vantage Navigation Corp. v. Suhail & Saud Bahwan Building Materials Llc.}\textsuperscript{33} it was laid down by the Court that a contract entered into as a result of actual or threatened violence against property or illegal seizure of goods can be set aside on the ground of duress. The money paid by the plaintiff to the defendant for release of goods from unlawful detention can be recovered\textsuperscript{34}.

Similarly, economic duress is now treated to affect a contract in such a way that it can be cancelled by the Court of Law and the party who has paid the money under a contract being affected by economic duress is entitled to recover it from the party to whom it has been paid. For example, if the defendant gives threat to the plaintiff of serious financial consequences unless he makes a contract with the defendant and then plaintiff makes the contract, the contract can be avoided and the plaintiff is entitled to recover money from the defendant on the ground of economic duress. In \textit{Universe Tankships Inc. of Monrovia v.}

\begin{itemize}
\item \textsuperscript{32} Mutual Finance Ltd. v. John Wetton & Sons Ltd., (1937) 2 K.B. 389.
\item \textsuperscript{33} (1989) 1 Lloyd's Rep. 138.
\item \textsuperscript{34} Maskell v. Horner, (1915) 3 K.B. 106.
\end{itemize}
International Transport Workers Federation\textsuperscript{35} (popularly known as the Universe Sentinel’s Case) the Court held that an unlawful threat by a trade union to continue the boycotting of a ship was a economic duress and the contract was voidable. Consequently, the plaintiff was entitled to claim for cancellation of contract and resitutionary remedy. Again, in North Ocean Shipping Co. Ltd v. Hyundai Contruction Co. Ltd.\textsuperscript{36} the Court laid down that when a party to a contact gives threat to the other party to break an existing contract, it is a sufficient ground to render the contract voidable and the contract made under such pressure cannot be performed. Likewise, in B & S Contracts and Designs Ltd. v. Victor Green Publications Ltd.\textsuperscript{37} the defendant told to the plaintiff that its worker will go on strike unless the plaintiff agree to make a payment in addition to a the contract price. The plaintiff made the additional payment. It was held by the Court that the contract of additional payment was made under economic duress and it could be set aside allowing the plaintiff to recover the money paid in excess of the contract price.

However, where it can be proved that the parties renegotiated the terms of the contract with free consent, it cannot be avoided on the ground of duress. It is also pertinent to mention that the aforesaid three kinds of duress can be included in a single expression called as \textbf{unlawful pressure or illegitimate pressure}.

- If money has been received by defendant after committing \textbf{extortion} against plaintiff, it has to be refunded to the plaintiff. Extortion

\textsuperscript{35} (1983) 1 A.C. 366.  
\textsuperscript{36} (1979) Q.B. 705.  
may be classified in two categories. First, extortion by threat and second, extortion colore officii. Threats of illegal action are examined under duress but here we are concerned only with such **extortion by threat** which is mainly related to tort of conspiracy or right of a trade association to prevent its members from lowering prices of goods. The tort of conspiracy is a subject of law of tort so it is beyond the boundaries of the present research work. Only the category of extortion by threat which involves trade association’s right comes within the domain of this subject. In Ware & De Freville Ltd. v. Motor Trade Association38 ‘Stop List’ was prepared by the Motor Trade Association to maintain retail prices of motor car. On such Stop List names of those dealers were put who sold the cars below fixed prices. The Association prevented its members not to carry on trade with those persons whose names were mentioned on the Stop List. It was held that the Stop List was lawful and the plaintiff was not entitled to injunction against the Association. The Court further observed that the maintenance of Stop List was for interest of business and Association and not for any other illegal purpose.

It can be submitted on the strength of this judgment that where purpose of preparation of Stop List is not lawful, the money paid can be recovered. That is to say, where money is extorted by threat, it can be recovered if its purpose is not to serve some legitimate object of the defendant.

**Extortion colore officii** means an extortion committed by a public officer. In other words, where a public officer demands some

38 (1921) 3 K.B. 40.
illegal money for carrying on his official duties or granting some privilege to the plaintiff, he commits the wrong of extortion colore officii. For example, where a tax officer demands extra money to reduce the tax illegally, he is guilty of committing extortion while performing his official duties. In Morgan v. Palmer\textsuperscript{39} the mayor demanded extra payment of fee for granting license to the plaintiff. The extra fee was paid by the plaintiff. It was held that the money so paid was illegal and therefore, it could be recovered by the plaintiff. Again, in Brocklebank v. The King\textsuperscript{40} for obtaining a license to transfer a ship, the ship owners paid such fee on demand of Shipping Controller which was illegal. In a claim to recover such money, it was held that the money was charged by the officer in course of discharge of duty and it amounted to extortion. Therefore, the money so paid was recoverable. Similarly, in R. & W. Paul Ltd. v. Wheat Commission\textsuperscript{41} some extra payment was made for obtaining wheat quota at the demand of the concerned officer under threat that in absence of payment of such extra money quota cannot be granted. It was held by the House of Lords that such payment was extortion colore officii and it could be recovered by the plaintiff.

Thus, money extorted colore officii can be recovered only when it was paid under some illegal or undue pressure put upon the plaintiff by the defendant.

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\textsuperscript{39} (1824) 2 B. & C. 729.
\textsuperscript{40} (1924) 1 K.B. 847.
\textsuperscript{41} (1937) A.C. 139. See also Westpac Banking Corp. v. Cockerill, (1998) 152 A.L.R. 267 (where an agreement is made by a blackmailer by threatening to do an act such as to tell a wife of her husband’s adultery or, to appoint a receiver cannot be set aside as the blackmailer is lawfully entitled to do so.
- Payment made **under pressure of legal proceedings** can be recovered only when it is proved that the judgment has been obtained by fraud. When some judgment is delivered by a competent Court and money has been paid by the plaintiff, he cannot recover it provided he has paid such money on furtherance of the judgment. But where the judgment has been obtained by fraud, the plaintiff can recover the money which he has paid in consequence of such judgment. In **Moore v. Fulham Vestry**\(^{42}\) it was observed by Lord Halsbury, the Lord Chancellor of the House of Lords that money paid under a judgment is recoverable if it has been paid under pressure of legal process. He further observed that the money so paid can be recovered when the plaintiff proves that the judgment was obtained by fraud.

### 2.1.1.2 Payments Recoverable On Subsequent Events Or Illegal Contract –

Upon happening of certain events, the plaintiff is entitled to recover money paid to the defendant. The events may be failure of consideration, breach of contract, frustration of contract and abortive contracts.

- Where **consideration of contract completely fails**, the money paid by the plaintiff in respect of such contract can be recovered. Such principle was first laid down in **Holmes v. Hall**\(^{43}\). Under **Scots Law** even a partial failure of consideration enables the plaintiff to recover money. But under the **English Law** the total failure of the consideration is necessary to hold the defendant liable to refund the

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\(^{42}\) (1797) 7 T. R. 269.

\(^{43}\) (1704) 6 Mod. 161.
money. Where payment is made by the plaintiff to the defendant in anticipation of some advantage or consideration which does not occur, the plaintiff is entitled to claim such money.\textsuperscript{44} Here the term consideration means some benefit which the plaintiff genuinely expects to receive. For example, in \textit{Martin v. Andrews}\textsuperscript{45} some money was paid to a witness to attend the trial. However, the matter was settled and the witness was not required to attend the Court during trial. It was held that the money so paid by the plaintiff to such witness could be recovered. In the present case, the consideration on which money was paid completely failed to occur.

- **Failure of consideration** can also result from \textit{breach of contract}. Upon breach of a contract the aggrieved party may bring action against the defendant either for damages or under quasi contract. In \textit{Wilkinson v. Lloyd}\textsuperscript{46} some shares were purchased by the plaintiff from the defendant in a joint-stock company. But due to differences between the Directors of the company and the defendant, the transfer of shares could not be registered. The Court held that the plaintiff could recover the money paid on shares as the defendant was guilty of breach of contract.

- In case of \textit{frustration of contract} the doctrine of failure of consideration applies. In the leading case of \textit{Fibrosa Spolka Akeyjna v. Fairbairn Lawson Combe Barbour Ltd},\textsuperscript{47} the House of Lords did not agree with the theory of implied in fact contract and delivered the judgment on the basis of quasi contract. A contract was entered between

\textsuperscript{44} John H. Munkman, The Law Of Quasi-Contracts, p. 40 may be seen.
\textsuperscript{45} (1856) 7 E. & B. 1.
\textsuperscript{46} (1845) 7 Q. B. 27.
\textsuperscript{47} (1943) A. C. 32.
the appellants and respondents whereby an order to purchase textile machinery was given by appellants. An advance of £ 1,000 was paid by the appellants to the respondents and the machinery was to be delivered at Gdynia in Poland. On account of outbreak of war the contract frustrated and no machinery was delivered. It was held by the House of Lords that on account of total failure of consideration the appellants were entitled to recover the advance payment of £ 1,000.

The decision still holds good to some extent but now the frustration of contract is governed by the Law Reform (Frustrated Contracts) Act, 1943. S. I(2) provides that payments made under the contract before the date of frustration are recoverable even though there has been only a partial failure of consideration.

- **Abortive contracts** may also enable the plaintiff to recover money which has been paid by him to the defendant. If due to some circumstances in which contract cannot be appreciated by the parties, it can be aborted by them. Money paid before such abortive situation is recoverable. In *Tyrie v. Fletcher*[^48] it was held by Lord Mansfield that when under an insurance contract risk cannot run the premium shall be returned because a policy of insurance is a contract of indemnity whether the risk has not been run due to fault, pleasure or will of the insured or to any other cause.

But the other hand in *Sinclair v. Brougham*[^49] did not agree with Lord Mansfield’s of formulations of quasi contract and instead of it evolved the theory of “**implied in fact contract.**” The House of Lords

[^48]: (1777) 2 Cop. 666.
[^49]: (1914) A. C. 398.
allowed rateable (paripassu) distribution of the mixed fund among the claimant and refused any remedy on the basis of quasi contract. In the present case a building society had carried on a business of a bank exceeding its power. The contract of depositors was held void. It was held that the depositors could not recover their deposits in a Common Law action for many had and received.

However, the observation of Lord Mansfield in Tyrie v. Fletcher appears to be more just and reasonable than observation of the Court in Sinclair’s case.

It is further to be noted that Sinclair’s case was overruled in 1994 in *West Deutsche Landes Bank Girozentrale v. Islington London Borough Council*\(^{50}\) House of Lords laid down that money paid by a person to another (such as a company) under a void contract is recoverable under an action of restitution for unjust enrichment and not on the basis of implied contract.

- Payment under an **illegal contract** can be recovered. An illegal contract can also be treated as a kind of abortive contract but it is a class in itself. Generally, money paid under illegal contract is not recoverable but it can be recovered when both the parties are not at fault. That is to say, where the maxim *In pari delicto potior est condition defendantis* does not apply, the party making the payment of money under illegal contract to the other party can recover it. In *Smith v. Cuff*\(^{51}\) one of the creditors made an agreement with the debtor for reducing his debt to some extent provided promissory note was given to him for

\(^{50}\) (1994) 4 All E. R. 890.
\(^{51}\) (1870) 6 M. & S. 160.
remaining debt. The promissory note was endorsed to a third party and the plaintiff paid the amount to such third party. The action brought by the plaintiff against the original creditor (i.e. the defendant) was allowed.

Again, where there is *locus poenitentia* (i.e. an opportunity to repent) the money paid can be recovered. It means where there is an opportunity to repent at any time before the illegal purpose of the contract has been carried out, the money paid by the plaintiff can be recovered by him. In *Hermann v. Charlesworth*\(^{52}\) money was paid to a middleman for arranging a marriage. It was held that such money was recoverable by the plaintiff from the middleman (defendant) irrespective of the fact that the middleman had carried out his promise.

Thus, the circumstances of recovery of money under an illegal contract are very limited and are only the two in number which have been discussed as above but these are remarkable to indicate that the plaintiff who pays the money in such cases has quasi contractual right to recover it.

It is to be noted that where a contract is void on account of illegality, the money paid or goods delivered is recoverable. To illustrate, it can be said that in *North Central Wagon Finance Co. Ltd. v. Brailsford*\(^{53}\) it was held that a party to an illegal contract cannot enforce it but he may be able to recover money or property transferred under it provided it is not precluded by the express words of the statute\(^{54}\) or by judicial interpretation.

\(^{52}\) (1905) 2 K.B. 123.

\(^{53}\) (1962) 1 W.L.R. 1288.

\(^{54}\) S. 18 of The Gaming Act, 1845.
2.1.1.3  \textit{Tracing Orders In Equity}\textsuperscript{55}

Regarding recovery of money had and received we can trace orders in equity. There are some rules in equity which are helpful in supporting quasi contractual obligations. Such rules are helpful in action for recovering money which have been received and retained by the defendant. The action so brought is relating to tracing assets. So, the doctrine of tracing assets is an equitable doctrine. It does not create any personal obligation but it creates a proprietary right in the sense that the money claimed by the plaintiff in equity can be traced into assets held by the defendant. For example, in \textbf{Re Hallett’s Estate}\textsuperscript{56} case it was held by the Court of Appeal that the Common Law rule can be extended on equitable ground to provide remedy in the case where plaintiff’s money was mixed by the defendant together with money collected by the defendant from different sources and deposited in a bank account. The doctrine of tracing assets was applied by the House of Lords in \textbf{Sinclair v. Brougham}\.\textsuperscript{57}

In \textbf{Banque Belge v. Hambrouch}\textsuperscript{58} a clerk and a lady were living together. The clerk obtained some cheques from the plaintiffs fraudulently from the plaintiff and deposited them into account of the lady. The plaintiffs brought an action requesting the Court to grant an order regarding repayment of the money. The contention of the plaintiffs was that money in the credit of the bank account was only the money realised from their cheques. The order was granted by the Court in favour of the plaintiffs. But the Court observed that the money could be

\textsuperscript{56} (1879) 13 Ch.D. 696.
\textsuperscript{57} (1914) A.C. 398.
\textsuperscript{58} (1921) 1 K.B. 321.
claimed at Common Law as there was no mixing of such money with other money of the defendant in the bank account. The Court also observed that the lady had received the money either for no consideration or immoral consideration. In *Re Diplock’s Estate*\(^5^9\) legacies were paid out to various charities by executors of the will. It was held by the House of Lords that on account of uncertainty legacies were void. Thereupon, those persons who were entitled on intestacy claimed that legacies should be refunded to them. They pleaded several grounds along with the ground of claim for tracing order in equity. The Court granted the order in favour of such persons. The Court observed that the next of kin had an equitable interest in the money and charities took as volunteers not as purchasers for value without notice.

It, therefore, follows that for money received from the plaintiffs by the defendant and retained by him (defendant), claim of the plaintiffs to recover such money has been allowed in equity. The equitable principle on which basis such claim is allowed is known as the doctrine of tracing orders in equity.

2.1.2 OBLIGATION OF REIMBURSEMENT: MONEY PAID AT THE DEFENDANT’S REQUEST-

The general principle is that where money is paid at the defendant’s express request, a contractual relation is created between the parties and thus, no quasi contractual relations can be created. But where no express request is made by the defendant for paying money and still money is paid by the plaintiff, a quasi contractual relation can be inferred.

\(^5^9\) (1947) 1 All E.R. 522.
from conduct of these two persons. In Child v. Morley\(^{60}\), it was laid down that no man can, by voluntary payment of the debt of another, make himself that man’s creditor and recover from him the amount of the debt so paid.

That is to say, no liability can be imposed on a person against his will to pay some money. Again a quasi contractual cannot be created merely by paying debt of another person at his request. But where the request is fictitious or artificial, a quasi contractual obligation can be inferred. It means where request is not expressly by the defendant and the money has been paid by the plaintiff, a quasi contract can be said to be implied in conduct of these two persons. For example, in Johnston v. Royal Mail Steam Packet Co.\(^{61}\) it was held that where money has been paid by a person at request of the defendant, or under compulsion or in respect of liability imposed can be recovered. Where a person a occupies a property in respect of which there is a claim that ought to have been discharged by another, being compelled to pay is entitled to reimbursement.

This case establishes that where money has been paid by the plaintiff at the defendant’s request, a contract comes into existence and he can recover it from the defendant as a contractual right. But where money has been paid by the plaintiff under compulsion which the defendant was legally bound to pay, a quasi contract comes into being existence between plaintiff and the defendant.

\(^{60}\) (1800) 8 T.R. 610.
\(^{61}\) (1867) L.R. 3 C.P. 38.
• The compulsion to pay money by the plaintiff may come into two ways- first, where plaintiff’s goods have been lawfully seized in respect of defendant’s debt, and second, where the plaintiff pays money under a legal liability.\textsuperscript{62}

For example, in \textit{Exall v. Partridge}\textsuperscript{63}, Partridge was one of three joint tenants of certain premises. The plaintiff kept his carriage on such premises with the knowledge of Partridge and also in his (Partridge) supervision. The owner of the premises demanded rent of the premises from the plaintiff and seized carriage until payment of rent. The plaintiff paid rent of the premises to get his carriage released. Afterwards, he brought an action again the three joint tenants including Partridge. It was held by the Court that the plaintiff paid the rent under compulsion and not voluntarily, therefore, he was entitled to recover the amount of rent from the defendants under an implied promise i.e. quasi contract.

Similarly, in \textit{Edmonds v. Wallingford}\textsuperscript{64}, father of two sons had borrowed some money from a person and died without repaying it. The creditor, in execution of his claim for realizing debt seized the goods of two sons. The debt was paid by the sons for release of their goods. They brought an action against the trustee who was appointed in bankruptcy of their father. The action was allowed as the debt was paid under compulsion of released of seized goods. The observation of the Court was that the defendant was bound the reimbursement of the plaintiffs under quasi contractual obligation. Again, \textit{Johnson v. Royal Mail

\textsuperscript{62} John H. Munkman, The Law of Quasi-Contracts, p. 70 may be seen.
\textsuperscript{63} (1799) 8 T.R. 308.
\textsuperscript{64} (1885) 14 Q.B. 811.
Steam Packet Co.\(^{65}\) is another case which throws light on the principle that money paid under compulsion can be recovered as a restitutionary right. In the instant case, the defendants were operating ship owned by another person under a contract. The ship was seized for payment of wages. The wages were paid by the mortgagees due to getting release of the ship. There was no direct relationship between the mortgagees and the defendants, nevertheless the mortgagees were allowed to recover reimbursement from the defendants for such payments made under compulsion to get release of the ship.

- Where the defendant is under legal obligation to pay some money and the plaintiff was under some legal compulsion to discharge the defendant’s legal liability, he can recover it from the defendant. For example, in Pownal v. Ferrand,\(^{66}\) a bill of exchange was issued by a person. It was endorsed. The indorser of the bill was sued by the holder for the money mentioned on it and the suit was allowed. Thereupon, the endorser brought an action against the acceptor of the bill and was allowed to recover the money which was the legal liability of the acceptor. Similarly, in Brooks Wharf and Bull Wharf Ltd. v. Goodman Bros.\(^{67}\), Some goods were stolen from the warehouse. The owners of warehouse were compelled to pay custom duty on such stolen goods. The owners sued the importers for reimbursement in respect of payment of custom duty. The sued was allowed. It was observed that the payment made by the owners was of that custom duty the payment of which was the legal liability of the importers. Again, in Moule v.

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\(^{65}\) (1867) L.R.3 C.P. 38.
\(^{66}\) (1827) 6 B. & C. 439.
\(^{67}\) (1937) 1 K.B. 534.
Garrett, a lease was granted. The assignee of the lease was responsible for repairs but he could not carry out the work of repairs. A suit was filed by the lessor against the original lessee for cost of repairs. Later on, the assignee was suit by the lessee to reimbursement. The suit was allowed though there was no express agreement to indemnify. This judgment establishes that the plaintiff was compel to discharge liability of assignee so was held entitled to receive reimbursement as quasi contractual right.

- Similar is the case with the surety who discharges liability of principal debtor. In other words, where surety pays debt of the principal debtor to the creditor, he is entitled to recover such amount from the principal debtor. It is primary responsibility of principal debtor to repay his debt to the creditor but if the surety has paid it, the principal debtor is bound to reimburse such payment to the surety. For this purpose, the surety is not required to wait to make payment to the creditor only when an action is brought against him (surety). It was rightly observed in Kearsley v. Cole, that the surety need not wait until an action is brought against him. Once he is called upon to pay under guarantee, he may do so, and the right to reimbursement will immediately arise. This case shows that the plaintiff discharged the liability of the principal debtor which the principal debtor was bound to pay and thus the surety was compelled to discharge such liability. Likewise, though obligations of parties of a bill of exchange are now governed by Bill of Exchange Act, 1882, yet the right of indorser to indemnify is still a contractual right.

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68 (1872) L.R. 7 Ex. 101.
69 (1846) 16 M. & W. 128.
70 John H. Munkman, The Law of Quasi-Contracts, p. 74 may be seen.
• If the defendant has, by his, act, put the plaintiff in a position where the plaintiff is subjected to some liability, the defendant may be held liable to indemnify the plaintiff. For instance, Brittain v. Lloyd\textsuperscript{71}, certain land was put up for auction. It was purchased at the sale. Even though the auctioneer was compelled to pay auction duty to the Crown. He brought his action against the vendor to get reimbursement for such payment made by him. His suit was allowed it is observed by the Court that the plaintiff was put by the defendant in a situation of being obliged to pay the auction duty to the Crown under circumstances in which the defendant was bound to repay him. Therefore, the defendant was bound quasi contractually to reimburse the plaintiff.

Again, in Receiver for the Metropolitan Police v. Tatum\textsuperscript{72}, In an accident, a police officer was injured due to negligence of defendant. The plaintiff was held liable to pay the plaintiff certain benefits under Statute. Thereupon, the plaintiff made a claim for reimbursement of such amount from the defendant. His claim was allowed and Court observed that though the Receiver was primarily liable to make payment to the police officer but since the plaintiff was put by him such a position where he was held liable to pay so, plaintiff was entitled to the reimbursement.

• Where the plaintiff has some genuine interest in payment of defendant’s debt and actually pays such debt though he was not legally bound to pay, he can seek reimbursement from the defendant. In other words, where the plaintiff declares his intention of

\textsuperscript{71} (1845) 14 M. & W. 762.
\textsuperscript{72} (1948) 1 All E.R. 612.
paying the defendant’s debt, though it is not legally enforceable against him provided that the plaintiff has some legitimate interest in the matter, the defendant will be held liable.\(^73\) In *Alexander v. Vane*\(^74\), both plaintiff and defendant went to market to purchase certain goods. The plaintiff gave verbal guarantee to the shopkeeper that if the defendant did not pay the price of purchased goods, he (plaintiff) would pay. The guarantee could not be enforced due to Statute of Frauds. The Court observed that assuming that the defendant was present at the time; we must take it that the defendant did agree that the plaintiff should pay the debt on his (defendant’s) default. Again, in *Heather v. Bell*\(^75\), the mortgagee of ship possession of the ship wrongfully. He paid wages of the crew. But before making payment of the wages he had asked the mortgagor whether he should not pay but got no reply. It was only then the wages were paid by him. He was held entitled to claim in indemnity for the payment made by him.

- **Subrogation** provides for another situation where reimbursement can be sought by the plaintiff from the defendant as a quasi contractual right. Subrogation comes into play when one person pays debt of another and he is held entitled to stand in the shoes of the creditor. He (the person paying the debt) can enforce every such right against the debtor which the original creditor could have enforced.\(^76\) The doctrine of subrogation has been recognized both at common law and at equity. The **surety’s right** who pays the debt of principal debtor to the creditor under a contract of guarantee comes under this category.

\(^{74}\) (1836) 1 M. & W. 511.
\(^{75}\) (1901) p. 272.
\(^{76}\) John H. Munkman, *The Law of Quasi-Contracts*, p. 77 may be seen.
Likewise, **insurer’s right** in a contract of insurance is also covered by the doctrine of subrogation. For example, in *Mason v. Sainsbury*\textsuperscript{77}, it was held that on account of riot damaged was caused. The insurers paid the damaged to the aggrieved party. The insurers were held entitled to sue in the name of their assured to claim damages against the rioters who were legally responsible for the damage.

However, it is to be noted that the act of the person paying the money of another person must be lawful. In case, such payment is unlawful, the person who pays the money cannot enforce his right to recover the money from the person on whose behalf it is paid. For instance, *Bannatune v. Maclver*\textsuperscript{78}, while exceeding the scope of his authority, a bank manager of a private firm borrowed money for the firm. At the time of borrowing money he told to the lender that the money is borrowed for the firm. The plaintiff (lender) brought an action against the firm to recover the money. It was held that the lender was entitled to recover money only to the extent that the loan had been applied discharging liability of the firm. Again, in *Liggett v. Barclay’s Bank Ltd.*\textsuperscript{79}, it was required by the company’s rule that every cheque was to be signed by both the directors of the company. But certain cheques were signed by only one director. These cheques were presented to the bank which paid them irregularly because the cheques were void (due to being signed by one director only). Nevertheless, the bank was allowed credit for them to the extent they were given in payment of liabilities of the company.

\textsuperscript{77} (1782) 3 Doug. 64.
\textsuperscript{78} (1906) 1 K.B. 103.
\textsuperscript{79} (1928) 1 K.B. 48.
It is thus, obvious subrogation applies only to the extent of valid payment or borrowing of money.

- **An agency by necessity is impliedly created between the parties.** That is to say, where a person saves another person’s interest in case of emergency without his express consent, an agency by necessity by created between such two persons on the basis of inference drawn by law from conduct of these two persons. The person who saves interest acquires status of an agent and the person whose interest is so saved acquires the status of a principal and agency so created between them may be termed as an agency by necessity. On the strength of decision delivered in *Jwilliam v. Twist*\(^{80}\) and in *Sachs v. Miklos*\(^{81}\), it is now clear that an agency by necessity can be extended to cover in case of bill of exchange, ship, perishable goods e.g. livestock (animals) carried by land. Later on, it was extended to a number of cases. For example, *Ambrose v. Karrison*\(^{82}\), the wife of the defendant died when the defendant was not at home. She was worried by the plaintiff. An action was brought by the plaintiff against the defendant to seek reimbursement by applying the doctrine of an agency by necessity for such expenditures which he in accrued in burial rites of the wife of the defendant. His action was allowed. Similarly, in *Great Northern Railway v. Swaffield*\(^{83}\), the railway company was handed over custody of a horse for being carried on to consignee’s destination. The horse was carried on to the consignee’s destination but the consignee did not come to take possession of horse within a due time. Meanwhile, the horse was fed by

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\(^{80}\) (1895) 2 Q.B. 84.
\(^{81}\) (1948) 1 All E.R. 67.
\(^{82}\) (1851) 10 C.B. 776.
\(^{83}\) (1874) L.R. 9 Ex. 132.
the railway company and feeding cost was sought by the railway company from the consignee. The Court held that the railway company was entitled for reimbursement as an agency by necessity was created between the railway company and the consignee.

2.1.3 OBLIGATIONS UNDER QUANTUM MERUIT (CASES OF RECOMPENSE)

The doctrine of quantum meruit is an English doctrine and suggests that when a person has rendered some service voluntarily for the benefit of another who enjoys such benefit, the person rendering the service is entitled to claim reimbursement. Such claim is based on quantum meruit i.e. on fair value of the benefits received by the person to whom it has been given by rendering the service. Thus, quantum meruit means fair value of the services rendered or works done or goods supplied voluntarily. It is to be noted that when some service has been rendered by a party in pursuance of his contractual obligation to the other party, the party rendering the service is entitled to recover value of the service\textsuperscript{84}. But if there is no contract and a person renders some service to another person without his request, he is entitled to make a quantum meruit claim i.e. a claim for fair value of the services so rendered provided the person to whom such service has been given has derived its benefit.

There is another similar doctrine known as the doctrine of quantum valebat. This doctrine means a claim for value of goods supplied by one person to another. But the radical difference between

\textsuperscript{84} Cutter v. Powell, (1795) 6 T. R. 320 (where the parties have come to an express contract, none can be implied).
‘quantum meruit’ and ‘quantum valebat’ is that while quantum meruit aims at providing reasonable or fair reimbursement but the quantum valebat provides for value of the goods.

Claims under quantum meruit can be made in a number of cases and such claims have been recognised as quasi contractual claims. To illustrate, it can be said that in Craven Ellis v. Cannons Ltd.\(^{85}\) it was laid down that 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 quasi contractual obligations. In another case of Luxor Easthourne Ltd. v. Cooper\(^{86}\) the Court again laid down that in some cases the claim may be based on quantum meruit… such claim is in the nature of quasi contractual claim.

- Where some benefits have been conferred by a party to another party under an ineffective contract, the fair reimbursement can be sought by the person who has supplied the benefits on the basis of the doctrine of quantum meruit.

Thus, where some service has been performed or work has been done or goods has been delivered under a void contract, the doctrine of quantum meruit applies.

For instance, in Craven Ellis v. Cannons Ltd.\(^{87}\) the plaintiff was an estate agent and he was also a director of a company. He rendered useful services in favour of the company and benefit of such services

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\(^{85}\) (1936) 2 K.B. 403.
\(^{86}\) (1941) A.C. 108.
\(^{87}\) (1936) 2 K.B. 403.
were accepted by the other directors. But the directors who accepted the services had ceased to be directors at the time of acceptance of services. So, the directors had no authority to act on behalf of the company. Consequently, the contract between the director who has performed services and the other directors who had accepted such services was void. The plaintiff (director) made a claim to seek reimbursement for services rendered by him. The Court observed that the plaintiff was entitled to reasonable remuneration on the basis of application of the doctrine of quantum meruit.

Similarly, in Scott v. Pattison\(^88\) a contract was required to be in form of written memorandum under Statute of Frauds. A farm labourer entered into a contract. But the contract did not commence for a year so it was required to be made by a memorandum in writing. The contract was thus unenforceable in absence of such memorandum in writing. Even though the labourer was held entitled to receive remuneration for the services rendered by him as the benefit of services were accepted by the defendant.

- Where **necessaries** are supplied by a person to an infant or a lunatic, a quasi contractual obligation arises on account of such supply. The infant or lunatic bears quasi contractual liability for making reasonable payment in such a case to the supplier of necessaries. For example, in Nash v. Inman\(^89\) it was held that in case where necessaries are supplied to an infant, the real foundation of an action is an obligation which the law imposes on the infant to make a fair payment in respect of his needs satisfied.

\(^{88}\) (1923) 2 K.B. 723.
\(^{89}\) (1908) 2 K.B. 1.
Where some goods has been sold to the defendant (e.g. infant or lunatic) by the plaintiff and the contract is void, the goods can be recovered by the plaintiff on equitable ground especially on the basis of rule laid down in Leslie (R.) Ltd. v. Sheill\(^9\) provided the defendant has still possession of goods and he has not used it.

In **Tauranga Borough v. Tauranga Electrical Power Board**\(^9\) electricity was purchased under an ultra vires contract. The proceeds of the sale was collected by the Board. Even though the contract was void, the New Zealand Court of Appeals held that as the money collected was traceable therefore the Board was liable to account for such money.

It is to be noted that the age of majority was reduced from 21 to 18 years in England on January 1, 1987.\(^9\) Further it is worth mentioning that the Infant’s Relief Act, 1874 was replaced by **Minors’ Contracts Act, 1987**. The present Act deals with rights and liabilities of minor under contract made during minority. By virtue of S. 3 of the Minors’ Contracts Act, 1987 it is clear that a contract against minor is unenforceable or voidable. Again, it is also voidable at the option of minor. Only a contract in which minor acquires an interest of a permanent or continuous nature such as a contract to acquire an interest in land is binding on the minor unless he disclaimed it either during his minority or within a reasonable time after attaining the majority.\(^9\) However, a contract for necessaries is not voidable. In other words, where minor is supplied with the necessaries or given training or employment, etc. for his benefit and the benefits of necessaries are taken

\(^9\) (1914) 3 K.B. 607.
\(^9\) (1944) N.Z.L.R. 155.
by the minor. He has quasi contractual liability to compensate the other party.

However, in **R v. Oldham MBC**\(^94\) it was held that if minor is not capable of understanding the nature of the transaction, it may be declared invalid.

In **Chaplin v. Leslie Frewin Publishers Ltd.**\(^95\) it was held that a contract which is beneficial to minor cannot be cancelled. In the present case a minor was son of Charlie Chaplin. For an advance of royalties he assigned to L.F. Publishers an exclusive right to publish an autobiography of himself. Later on he granted to cancel the assignment. The Court of Appeal held that as the contract was beneficial he could not cancel it.

Similarly, a contract made with a person of unsound mind is voidable. Now, the **Mental Capacity Act, 2005** deals with mental capacity of a person. But in **Irvani v. Irvani**\(^96\) it was laid down that a party dealing with the person who lacks mental capacity is protected if he or she did not know of the lack of capacity. The basis on which such contract is voidable is that the other party has improperly taken advantage of weaker person.

- **A quasi contractual obligation** may arise even in the case where **breach of a contract** is caused. The general rule is that when breach of a contract is caused the party who becomes aggrieved is entitled to seek damages from the other party. But there may be cases

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\(^94\) (1993) 1 F.L.R. 645.
\(^95\) (1966) Ch. 71.
when upon breach of a contract reasonable compensation may be claimed on the basis of quantum meruit as an alternative remedy to the damages. For example, when a party to a contract has refused to perform the contract, the other party can bring an action for damages treating the refusal as breach or he can claim fair compensation on quantum meruit basis treating the refusal as repudiation of the contract provided he has done some work in pursuance of the contract. Some relevant cases may be quoted here to explain this point. In Planche v. Colburn\textsuperscript{97} publishers offered to the plaintiff for writing a book telling him that such book would form a part of series of books for children. The plaintiff accepted the offer and started to write the book. Before he could complete the book, the publishers abandoned the project. The plaintiff was held entitled to recover reasonable remuneration from the publishers on a quantum meruit basis. Similarly, De Bernhardy v. Harding\textsuperscript{98} may be quoted. It was laid down that where one party has absolutely refused to perform or has rendered himself incapable of performing his part of the contract he puts it in the power of the other party, either to sue for a breach of it or to rescind the contract and sue on a quantum meruit for work actually done. Again, in Luxor (Eastbourne) Ltd. v. Cooper\textsuperscript{99} the Court observed that such a claim is in the nature of a quasi contractual claim and it is based on quantum meruit. Further, in Heyman v. Darwins Ltd.\textsuperscript{100} the House of Lords while affirming the view expressed in these cases held that upon refusal by a party to perform contract, the injured person may sue on the contract forthwith...or if he has wholly or partially performed his

\textsuperscript{97} (1831) 8 Bing 14.
\textsuperscript{98} (1853) 8 Ex. 822.
\textsuperscript{99} (1941) A.C. 108.
\textsuperscript{100} (1942) A.C. 356.
obligation, he may in certain cases neglect the contract and sue on a quantum meruit.

Where work is incomplete due to default of the plaintiff, claim on quantum meruit can be made. It means where plaintiff after doing some work leaves the remaining work to be done and the defendant has derived benefit of such work, the plaintiff can claim reasonable compensation of the work done by him on the basis of quantum meruit. For instance, in Sumpter v. Hedges\textsuperscript{101} the plaintiff was a builder. He entered into a contract to construct a building for the defendant for a definite sum of money. But he left the building unfinished. The defendant had no option of rejection of the work. He was bound to accept the work done by the plaintiff. A claim of reasonable remuneration was made by the plaintiff for work done by him. The defendant was held liable.

However, where the defendant has an option to reject the work done by the plaintiff and he exercises his option of rejection, the plaintiff’s claim for reasonable compensation on the basis of quantum meruit cannot be entertained where the claimant had substantially performed the contract because then there was a claim for the agreed sum under the contract.

- In case of a partial performance (i.e. an incomplete performance) of the whole contract has been made, the remedy on the basis of quantum meruit can be sought. It means where a party to a contract partially performs a contract and the other party freely accepts it or waives need of complete performance, the former is entitled to claim a

\textsuperscript{101} (1898) 1 Q.B. 673.
remuneration of his part performance on the ground of quantum meruit. But for this purpose it is necessary that the other party who is not in default must have an option either to accept or to refuse the performance. In Re Hall & Barker\textsuperscript{102} it was held that if a shoemaker has agreed to make a pair of shoes he cannot offer one shoe and make claim for its payment i.e. half price. But if the person to whom one shoe is given accepts it, he is bound to pay for it on quantum meruit basis. Similarly, S. 30(1) of the Sale of Goods Act, 1979 provides that were the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he must pay for them at the contract rate\textsuperscript{103}.

For example, in Sumpter v. Hedges\textsuperscript{104} the simplified facts are as follows: the plaintiff (e.g. S) agreed to construct two houses and stables on the land of defendant (e.g. H) for £565. But he could not complete the contract. Thereupon, the buildings were completed by H with the materials left on the site by S. An action was brought by S to recover value of materials left on the site and also for incomplete work done by him. The Queen’s Bench held that the plaintiff was entitled to recover value of materials left by him and used by the defendant as the defendant had choice to use or not to use such materials. But he could not recover for the work done by him because the defendant had no option except to accept such incomplete work.
Again, in Miles v. Wakefield MBC\textsuperscript{105} it was observed by the court that if the employer has not made it clear that reduced or inefficient work will not be accepted, the employee will be entitled to a reasonable sum for that reduced work.

- In case of \textbf{frustration of a contract} quasi contractual obligation on quantum meruit basis can arise in respect of the work done by the plaintiff before event of frustration occurs. However, now this situation is governed by the Law Reform (Frustrated Contracts) Act, 1943. Section 1(3) provides that compensation may be claimed for any benefit conferred on the other party to the contract, before it was frustrated by part performance of the contract. The compensation is limited to the value of the benefit conferred. In assessing the compensation, account must be taken of any expenses or advance payment incurred by the party benefitted and also of the effect on the value of the benefits of the circumstances causing frustration.

It is submitted that the obligation of the defendant to pay compensation to the plaintiff in case of frustration of the contract is now statutory but it has its genesis in a quasi contract.

- \textbf{Maritime salvage} gives rise to quasi contractual liability. It means where in case of sea peril, a ship or cargo is salved (i.e. saved), the party saving the ship or cargo is entitled to receive fair compensation on the strength of quantum meruit from the owner of ship or cargo.

For instance in the \textit{Hestia}\textsuperscript{106} it was observed by the Court that salvage claims do not rest upon contract. Where property has been saved

\textsuperscript{105} (1987) A.C. 539.
\textsuperscript{106} (1895) P. 193.
from sea perils and the claimants have effectuated the salvage or have contributed to the salvage, the law confers upon them the right to be paid salvage rewards out of proceeds of property which they have saved or helped to save.

The above mentioned view of the Court establishes that the person who saves the ship or cargo from eminent danger is entitled to make claim for compensation for his such act.

The Air Navigation Act, 1936 now governs such liability of the owner of ship or cargo. This Act also applies to cover such cases where aircraft flying over the sea or tidal waters is saved or goods carried on by it are saved. The basis of such liability is quasi contractual.

- In some cases of land improvements quasi contractual obligation is admissible on the basis of the doctrine of quantum meruit. For example, by virtue of Agricultural Holdings Act, 1948 a tenant of agricultural land is entitled to claim compensation for improvements made by him to such holdings. But such improvements should be of very minor nature or continuous good farming of the holding. The assessment of the compensation is made according to value of improvements for the tenant coming in future. Similarly, according to the Land Lord and Tenant Act, 1927 if improvement to the land is made by the tenant, he is entitled to the compensation only for such improvement which increases the letting value of the holding. In Charrington & Co. Ltd. v. Simpson\textsuperscript{107} the Court was of the opinion that the measure of any compensation to the tenant is not what he loses but what the landlord gains. This judgment establishes that the gain to be achieved by the

\textsuperscript{107} (1935) A.C. 325.
landlord on account of improvements to the land made by the tenant has to be given prime importance while determining the quantum of compensation.

- Where for total breach of a contract by a party (i.e. failure of total consideration) is caused and specific performance, damages and injunction are not the adequate remedies for the other party, restitutionary remedy may be granted against the contract breaker for gain obtained by him. In the leading case of Attorney General v. Blake\textsuperscript{108} a contract was made by a former member of intelligence services that he would not divulge any information obtained in course of his employment. But the member divulged the information by way of publishing autobiography. The royalties paid by the publishers to such member was sought by the Crown. The House of Lords held that the defendant was liable to have account of profits received from a breach of contract. the Court observed that where compensatory damages, specific enforcement and injunction are inadequate or are not available, the Court can direct the defendant to repay the profits obtained by party committing the breach. It is obvious that such remedy is a restitutionary remedy. Though such remedy is rare but it was also granted in some subsequent cases\textsuperscript{109}.

- It is well known that the remedy of quantum meruit is not based on a contract but it is pertinent to mention that sometimes the quantum meruit or quantum valebat claim can be allowed on the basis of

\textsuperscript{108} (2001) 1 A.C. 268.

\textsuperscript{109} Lane v. O'Brien Homes Ltd., (2004) E.W.H.C. 303 (Q.B.). In this case damages was awarded for profit obtained from a building. See also WWF-World Fund For Nature v. World Wrestling Federation Entertainment INC, (2008) 1 W.L.R. 445. It was held that it cannot possibly be correct to regard an account of profits as compensatory rather than restitutionary.
contract as such claim is treated as contractual. Where some service is rendered or some goods is delivered under a contract and no price is fixed, for remuneration of such service or price of goods the claim under quantum meruit may be allowed. In certain cases such claim has been made statutory. For example, S. 8(2) of the Sale of Goods Act, 1979 provides that where some goods has been sold and delivered without fixing its price, the buyer is bound to pay its reasonable price depending on the remedy of quantum meruit. Again, S. 15(1) of the Supply of Goods and Services Act, 1982 posits that where some services have been given under a contract without fixing price, the recipient of services must pay reasonable price. However, it is to be noted that such aspect (i.e. claim of quantum meruit on the basis of contract) is not the subject of study and examination under the present thesis.

- Where some services have been rendered by a person under a contract to another person for agreed amount, the claim on basis of quantum meruit cannot be allowed. For example, the S.C. of United Kingdom has given its observation in this regard. In Benedetti and Another v. Sawiris and Others, the plaintiffs agreed with the defendant to give their advisory services for avulsion of company by the defendants for some reward. But the plaintiffs claimed remuneration on the basis of market value of their services. They pleaded that if remuneration according to market value was not given, defendants would enriched unjustly at the cost of plaintiffs’ services. Thus, plaintiffs claim was on the basis of quantum meruit. However, the claim of plaintiffs were rejected by the S.C. of U.K. on the ground that in the

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present case, the plaintiff’s claim on quantum meruit was not maintainable as the remuneration was fixed by the agreement.

2.1.4 OBLIGATION TO RECOVER MONEY HAD AND RECEIVED FROM A THIRD PARTY: (THE OBLIGATION TO ACCOUNT)

The general principle is that where plaintiff pays some money to the defendant by mistake, fraud etc. or as a debt, he can recover it from him. One of the reasons for recovery of such money is that there is a privity of contract between them. But when the defendant receives some money from a third party for use of the plaintiff, it is very difficult to say as to whether the plaintiff can recover it from the defendant. Since there is no privity between the plaintiff and the defendant, therefore the natural answer is that on the ground of privity of contract, the plaintiff should not be allowed to recover such money. It is well known that the doctrine of Privity of contract is the development of specially eighteenth and nineteenth century in England. The doctrine provides that only parties to a contract can sue and be sued under a contract. So, from the standpoint of privity of contract, the money received by the defendant from a third party for plaintiff’s use cannot be recovered because there is no direct relationship regarding contractual obligations between them.

However, by the time of Henry VIII the law which came into existence began to allow that such money can be recovered by the plaintiff from the defendant. It is worth mentioning that such money could be recovered through writ of Account before the development of writ of Indebitatus Assumpsit. The writs of Debt and Account were

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replaced by the writ of Indebitatus Assumpsit. Some cases may be quoted here to examine the point in *Williams v. Everett*\(^ {113}\). Kelly had given some bills of exchange to his bankers with instructions to collect bills and pay his creditors. This information was also given by Kelly to the creditors. The plaintiff who was one of the creditors sued the bankers for his debt. His claim was not allowed. The Court observed that as the bankers (defendant) still hold the money according to Kelly’s directions and had not assented to hold it to the plaintiff’s use, therefore the defendant was not liable to pay the money to the plaintiff (which Kelly had borrowed from the plaintiff).

It follows from this case that the consent of the defendant to hold money for plaintiff’s use which he had received from a third person is necessary. It is because unless the defendant consents to hold money for plaintiff’s use, he cannot be held liable to pay such money to the plaintiff.

The liability of an agent is to account to his principal for money received by him from a third person on behalf of the principle. For example, in *Boston Deep Sea Fishing & Ice Co. Ltd. v. Ansell*\(^ {114}\), director of fishing company received bonuses from a third party. Such third party supplied ice to the company. It was held by the Court that the company was entitled to claim the bonuses so paid to the director because the bonuses paid to the agent were indirectly to be for use of the principle.

\(^{113}\) (1811) 14 East. 582.
\(^{114}\) (1888) 39 Ch. D. 339.
Even bribes received by a servant during course of his employment on behalf of employer for providing service or ensuring any other work of the person giving the bribes is recoverable by the employer as such money can be treated to be the money for use of the employer. In Lister v. Stubbs\textsuperscript{115}, it was held that the secret bribes received by a servant in course of employment of his master can be recovered by the master. Such money can be treated to be received by a servant on behalf of the master and for use of the master. Similarly, in A.G. v. Goddard\textsuperscript{116}, secret bribes were received by a police officer in course of his employment. A claim was brought in the Court of law on behalf of Crown. It was allowed by the Court though no pecuniary interest of the Crown was affected.

However, where bribe has been received by the servant from a third person not in course of employment, the employer or the master has no right to claims the money paid to the servant as bribe. For example, in Reading v. The King\textsuperscript{117}, the Court held that as the bribes money was not received by the servant in course of his employment, therefore, the master could not claim such money. The reason of refusing the remedy to the master was that the money received by the servant as the bribes fell out of course of employment, so it cannot be said to be the money received for use of the master.

Where defendant is not an agent or servant of the plaintiff but has received some money from a third person in course of discharging function of his office, he can be held accountable to the plaintiff. For

\textsuperscript{115} (1890) 45 Ch. D. 1.
\textsuperscript{116} (1929) 98 K.B. 743.
\textsuperscript{117} (1948) 2 All E.R. 27.
example, an executor of a Will is liable to the legatee to the extent of the assets of his testator which he (executor) has in his possession. In *Hart v. Miners*\(^{118}\), the claim of legatee against the executor was allowed to recover money which the executor had and received from the testator. It is worthwhile to mention that even upon death of executor, his representatives may be held liable to pay money to the legatee provided the executor had received sufficient assets to pay the concerned legacy and has died without paying the legacy.\(^{119}\)

A person, **who usurps** some office which the plaintiff is entitled to hold and receives some money or profits in such office, is bound to refund money so received to the plaintiff. In *Lamine v. Dorrel*\(^{120}\), the defendant was appointed as an administrator in some estate. Later on his administration was revoked. But even after such revocation he passed assets to a third person and received money from him. It was held that he was accountable to the plaintiff for such assets which he had passed to other person after revocation of the administration.

It is pertinent to mention that the modern concept of trust can be said to have direct link with quasi contract. Similarly there are many fiduciary relationships which can be said to be based on quasi contract. These are, for example, the relationship of principal and agent, partners inter se, master and servant etc. These relations generate quasi contract obligations.

In **United States of America** (U.S.A.), quasi contract or restitution has been dealt with in the Restatement (Second) of The Law

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\(^{118}\) (1834) 2 Cr. & M. 700.

\(^{119}\) Gorton v. Dyson, (1819) Gow 78 may be seen.

\(^{120}\) (1705) 2 Ld. Raym. 1216.
of Contracts in a pragmatic way. It is worth mentioning that in the (First) Restatement of The Law of Contracts in the Chapter of Restitution, it is mentioned that the restitution refers to three dimensional remedies. That is the restitution was awarded- (i) as a remedy for breach of contract committed by the defendant, (ii) as a relief in favour of defaulting plaintiff and (iii) as a compensation for performance made under a contract which turns out to be unenforceable because of non compliance with the Statue of Fraud. The rules of restitution have been very widely expanded to cover various cases of contract under Restatement (Second) of Law of Contracts. Especially, after amendment of Ss. 158 and 272 of the Restatement (Second), restitutionary remedy is available to the plaintiff when he has discharged the contract or when performance of the contract becomes impracticable on account of frustration, mistake, fraud, duress or in a like situations. It is also remarkable to note that after such amendment, now the Court has liberty to grant either restitution to the party falling victim of avoidance of contract due to reasons as mentioned here or it may grant, instead of restitution, such a relief which appears to it as a requirement of justice. Such requirement may include parties’ reliance interest. Here the term reliance interest refers to the interest of parties relying on performance of the contract. The ‘reliance interest’ can be said to have its closed relations with the principle of promissory estoppels. It is well known that the principle of promissory estoppel suggests that when a party makes a promise to the promisee, such promisee relies on the fact of performance of promise by the promisor.if the promise deviates from its promise, he can be stopped by the promise from the deviation. Thus, the promise places reliance on performance of the promise. Consequently, the promise can be said to have reliance interest in performance of promise. Thus, restitution or quasi contractual
obligation can be granted as a remedy in U.S.A. It can be submitted that such restitutionary remedy has now become more or less a statutory remedy because of it being incorporated under the Restatement of Law of Contracts.\textsuperscript{121} The remedy of restitution on the basis of unjust enrichment is still alive and operative. The plaintiff is entitled to such remedy from the other party to the contract in any of the circumstances as discussed above i.e. for example, where contract cannot be performed due to frustration, fraud, duress, mistake etc.\textsuperscript{122}
