CHAPTER-5

DOCTRINE OF QUANTUM MERUIT AND DOCTRINE OF UNJUST ENRICHMENT: AN OVERVIEW

DOCTRINE OF QUANTUM MERUIT

INTRODUCTION

A person is not precluded from pursuing alternative claims of breach of contract and unjust enrichment in separate counts.¹ A party may plead alternative causes of action for an express contract, a contract implied-in-law, and a contract implied-in-fact.² Deciding whether and when to bring a quasi-contract or quantum meruit claim as opposed to a claim for breach of an express contract requires several strategic considerations. For example, a plaintiff may wish to initially plead such an implied-contract claim, as an alternative theory, along with a claim for breach of an express contract. Exposure to broader discovery and possible necessary motion practice from a defendant may lead the plaintiff to stick with one theory over the other, at least initially. Indeed, a plaintiff may choose to explore the appropriateness of such a claim through the discovery process with respect to a breach of contract claim and seek leave to amend, if necessary. The key to the analysis is determining the existence and ability to establish that there is an express contract between the parties on the relevant subject matter, which the defendant breached that caused damage to the plaintiff. If not, or if difficult to prove, a plaintiff may need to consider pursuing an implied contract theory.

It is common in the cases related to contract that the parties are confused regarding the theories of recovery commonly known as “quantum meruit” and “unjust enrichment”. “Usually, these theories are pleaded as alternate counts where a plaintiff is uncertain as to the feasibility of a claim for breach of contract or for restoration of the benefit which the other party has gained. Sometimes, however, both quantum meruit and unjust enrichment are improperly pleaded in the same suit, and sometimes

¹ Intercoastal Realty, Inc. v. Tracy, 706 F. Supp. 2d 1325 (S.D. Fla. 2010).
² Baron v. Osman, 39 So. 3d 449, 452 (Fla. 5th DCA 2010).
the remedy chosen is incorrect due to the circumstances of the case. Thus, it is important here, to discuss the difference between both the theories. As failure to differentiate between the two may lead to a misguided analysis of the claims with consequences probably fatal to the litigation. One of the reasons for confusion between the two may be that quantum meruit evolved in law as a means to accomplish exactly the same equitable remedy for preventing the “unjust enrichment” that might occur where a party who had rendered his services without any contract. Therefore, the courts while discussing quantum meruit sometimes refer to regularizing the goal of preventing a party from becoming “unjustly enriched” without intending to invoke the equitable remedy known as “unjust enrichment”. In fact, “unjust enrichment” is recognized as one of the elements of doctrine of quantum meruit.

Thus, in analyzing whether a particular case should be pleaded as quantum meruit or unjust enrichment, one thing should be very clear that, the primary purpose of both is the same; the elements of the respective actions are different.

In the current extremely dynamic and competitive scenario, it is common for contracting parties to end up in a situation where there is a need to make claims for damages or reimbursement of loss. The Latin expression “quantum meruit” is one of the most popular expression used in law today. It relates to the field of law of contract. Unfortunately, its meaning is not clear. The definition varies slightly from one judicial system to another. This is largely based on the different legal decisions that have interpreted the term. It actually means “as much as he deserves”. Traditionally, courts assessed a quantum of damages, where work was performed pursuant to a contract, but no agreement was reached on the amount, the court would just determine what was fair. In some judicial systems, “quantum meruit” is the court’s method of calculating damages arising from a contract, when the contract is unclear. The premise for the claims is that loss cannot be recovered adequately under the current contract, for one reason or another. As quantum meruit claims are of a particular kind, so, this claim occurrence has lead to the development of claim mechanisms. The application of quantum meruit is not just been limited to rescinded contracts, where clearly the contract cannot be used for reimbursement of loss. The quantum meruit claim practice has also spread to other situations like: where the
plaintiff believes they have not been appropriately compensated for loss, hence their subsequent claim against the defendant.

In England, as a part of the development of law, there were two separate and distinct systems. There were common law courts. They dealt with matters of contract, real estate, property, the devolution of estates and other matters that arose within the common law system. It became clear that after a period of time, some decisions made based upon a strict interpretation of the law, were just too harsh. Consequently, there were a number of equitable matters that were resolved in a parallel court system. These were Courts of Equity, and they had jurisdiction over equitable remedies. They operated out of a sense of “fairness”. In some cases, parties were first required to apply to one of the common law courts, and then if a further resolution was required they would apply to a court of equity for the appropriate remedy. Later on, the Courts of Common Law and the Courts of Equity merged into one court system and a parallel equitable doctrine of law known as the law of restitution developed along with the development in Law of Contract.

**QUANTUM MERUIT: THEORY & DEFINITIONS**

Before discussing its meaning, an attention should be paid to the theory of *quantum meruit*. This theory is based upon the idea that recovery should be granted to one party to obtain the value of their services when another party was unfairly and unjustly enriched. *Quantum meruit* is actually, asking the court to award damages based on the value of the work performed.

**THEORY OF QUANTUM MERUIT**

As mentioned above, *quantum meruit* involves cases where someone gets a benefit while the other party gets nothing. In Latin, this phrase means “*what one has earned*”. In law of contract, this refers to the benefit or enrichment one party receives as a result of the other party’s actions. Under the law, the theory means that another party has received an unfair benefit and thus must provide restitution to the party who provided that benefit. Thus, *Quantum meruit* is a theory in the law that requires fairness and reasonableness. The theory fosters equity of the parties and helps to ensure that if a person provided a service or a good, that person receives the benefit of the contract. It is an important theory in law because it allows a court to provide a fair result in an unfair situation.
DEFINITIONS

Acc. to Blacks Law Dictionary

“Quantum meruit” means “as much as he deserves”. It is an expression that describes the extent of liability in a contract implied by law. It is an equitable doctrine, based on the concept that no one who benefits by the labour and materials of another should be unjustly enriched thereby. The law implies a promise to pay a reasonable amount for the labour and materials furnished, even when there is absence of a specific contract.”

This definition appears to unite the two separate and distinct meanings of the term. The law of restitution includes the doctrine of quantum meruit. It is also sometimes known as the law of unjust enrichment. Unjust enrichment offers two important remedies:

1. Quantum meruit; and
2. A constructive trust

While the law of restitution is similar to contract, but it is quite clear that there was no contract. This is the reason why there is a need of another body of law to respond to the claims. Quantum meruit is an equitable remedy available to the courts, when the courts are exercising their equitable jurisdiction under the law of restitution. In other jurisdictions, quantum meruit is a method of assessing damages in contract cases.

Thus, quantum meruit is a legal principle under which a person should not be obliged to pay, nor should another be allowed to receive, more than the value of the goods or services exchanged; hence, as much as is deserved. Quantum meruit is often claimed by lawyers, for example, where they have performed legal services for a client but neglected to have the client sign a retainer. In order to recognize their bill for services by the court, they fall back on quantum meruit. It is closely related to the equitable concept of unjust enrichment. Although the existence of a quantum meruit remedy does not depend on a contract, yet it is a remedy in law of contract, where a contract has been breached but after one side received partial or full benefit, and the contract does not include a clause providing for this eventuality (such as a liquidated damages clause).

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Justice Read provides a comprehensive explanation of *quantum meruit* as follows:

"*Quantum meruit* is a separate and distinct cause of action from either contract or tort. It is founded upon an obligation imposed by law when there would otherwise be an unjust enrichment of one party at the expense of the other."

When there is a contract between the parties, remuneration is said to be paid on a *quantum meruit* basis when, although a valid contract is found to exist in fact and law, there is no clause spelling out in express terms the consideration for the contract. In such circumstances, the courts award reasonable remuneration to the person who has rendered the services. In case of a *quasi*-contracts, an action for *quantum meruit* is based, in general, upon the rendering of services by one person to another who has requested such services be rendered or freely accepted them with the knowledge that they are not rendered gratuitously. A person should only be called upon to pay for benefits, in general, where he has requested or freely accepted such services with the opportunity to reject. It is not sufficient that the plaintiffs have rendered the services under a mistake. He must go further and show that the services were requested or freely accepted by the defendant.

Thus, a claim for *quantum meruit* is for reasonable remuneration for the services provided, the amount it deserves or what the job is worth. And the trial judges are correct when they noted that, *quantum meruit* involves consideration of the amount and value of the services rendered, not potential profit. The amount to which a plaintiff is entitled on the basis of unjust enrichment is the value of the benefit obtained by the defendant, and not the loss to the plaintiff assessed as if the contract were fulfilled.

In a famous case the court held that an action could be brought on a *quantum meruit* basis to recover reasonable remuneration for work done under an otherwise unenforceable contract.

**DOCTRINE OF QUANTUM MERUIT IN ENGLAND**

The term "*quantum meruit*" actually describes the measure of damages for recovery on a contract that is said to be "implied in fact." In an English case it was held by the

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4 Daniel Friedman, “*Restitution of Benefits Obtained Through the Appropriation of Property or the Commission of a Wrong*”, 80 Colum. L. Rev. 504 (1980).
5 Pavey & Matthews Pty Ltd. v Paul, (1987) BC 870 1760; 162 C.L.R. 221.
court that the law imputes the existence of a contract based upon one party’s having performed services under circumstances in which the parties must have understood and intended compensation to be paid. Therefore, further, it was held by the court in a case,\(^7\) that the recovery in *quantum meruit* is said to be based upon the “assent” of the parties and, being contractual in nature, it sounds in law.

Thus, in Hermanowski v. Naranja Lakes Condominium No. Five, Inc.,\(^8\) the court held that to recover under *quantum meruit* one must show that the recipient:

1. acquiesced in the provision of services;
2. was aware that the provider expected to be compensated; and
3. was unjustly enriched thereby.

*Quantum meruit* recovery is appropriate where the parties, by their conduct, have formed a relationship which is contractual in nature, even though an enforceable contract may never have been created. For example, where a written agreement between an owner and a contractor is deemed unenforceable as a result of a technical deficiency or because it violates public policy, the contractor may still recover in *quantum meruit.*\(^9\)

In an English authority,\(^{10}\) the court explained that statute of frauds barred enforcement of oral contract. As a general rule, one should not look to recover in *quantum meruit* unless there have been direct dealings between the parties that create the basis for the contract to be implied “in fact”. Since specific terms in an implied contract are absent, the law supplies the missing contract price by asking what one would have to pay in the open market for the same work. Thus, the measure of damages under *quantum meruit* is defined as “the reasonable value of the labour performed and the market value of the materials furnished” to the project.\(^{11}\)

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\(^7\) Rite-way Painting & Plastering, Inc. v. Tetor 582 So. 2d 15 (Fla. 2d DCA 1991), rev. dismissed, 587 So. 2d 1329 (Fla.1991).

\(^8\) 421 So. 2d 558 (Fla. 3d DCA 1982), rev. denied, 430 So. 2d 451 (Fla. 1983).

\(^9\) See, e.g., Wood v. Black, 60 So. 2d 15 (1952) (contract unenforceable because contractor not licensed);

\(^{10}\) Tobin & Tobin Ins. Agency, Inc. v. Zeskind, 315 So. 2d 518.

\(^{11}\) Moore v. Spanish River Land Co., 159 So. 673, 674 (Fla. 1935).
DOCTRINE OF QUANTUM MERUIT IN INDIA

In India, the Common Law rule has been departed from, and the Legislature in Section-70 of the Indian Contract Act, 1872 provides for the recovery of compensation in certain cases, where a person lawfully does anything for another without intending to do so gratuitously, and such other person enjoys the benefit thereof. In order to come within the principle contained in the section, two essential points have to be made out: firstly, that the person doing the work did not intend to do it gratuitously, that is, without intending to receive anything towards remuneration, and secondly, that the other person has received the benefit from the work done. The mere acceptance of the benefit of another's work does not give rise to an implied promise to pay thereof. The work must have been lawfully done with the intention of claiming something in remuneration, and under Indian law there is also an authority to hold that it is necessary to give the person who is sought to be made liable, an opportunity to refuse, on the principle that no man is bound to pay for which he does not had the option of refusing, though it may be noticed that the decisions are not uniform, and the question is still not free from doubts.

APPLICATION OF DOCTRINE OF QUANTUM MERUIT IN ENGLAND AND INDIA

Quantum meruit is the measure of damages where an express contract is mutually modified by the implied agreement of the parties, or not completed. While there is often confusion between the concept of quantum meruit and that of “unjust enrichment” of one party at the expense of another, the two concepts are distinct.

The concept of quantum meruit applies in (but is not limited to) the following situations:

1. When a person hires another to do work for him, and the contract is either not completed or is otherwise rendered unperformed, the person performing may sue for the value of the improvements made or the services rendered to the defendant. The law implies a promise from the employer to the workman that he will pay him for his services, as much as he deserve.

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12 Section70 of the Indian Contract Act Says: Obligation of person enjoying benefit of non-gratuitous act; “Where a person lawfully does anything for another person, or delivers anything to him, not intending to gratuitously, and such person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing no done or delivered”.
The measure of value expressly mentioned in a contract may be submitted to the court as evidence of the value of the improvements or services, but the court is not required to use the terms of the contract, when calculating a *quantum meruit* award. The reason behind this is that the values expressly mentioned in the contract are rebuttable, meaning thereby the one, who, ultimately may have to pay the award can contest the value of services set in the contract.

2. When there is an express contract for mode of compensation for services and for a stipulated amount, the plaintiff cannot abandon the contract and resort to an action for a *quantum meruit* on an implied contract. However, if there is a total failure of consideration, the plaintiff has a right to elect to repudiate the contract and may, then, seek compensation on the basis of doctrine of *quantum meruit*.

In an English judgment\(^\text{13}\) it was held and later on applied in Victoria in Sopoy v. Kane Constructions Pty Ltd.\(^\text{14}\) Restitution now forms the doctrinal basis of *quasi contract*. *Quasi contract* or “money claims” included *quantum meruit*, *quantum valebat*, moneys had and received, recovery of moneys paid under a mistake, or upon a total failure of consideration, and note restitution on a *quantum meruit* for terminating party where contract discharged for breach or repudiation as an alternative to sue for damages for breach of contract.

For a plaintiff to claim for lost earnings through a *quantum meruit* claim, it is the basic requirement to prove his claim and eventually to convince the court that there is a benefit to the defendant and an unjust enrichment flowing from the benefit. While the principle of *quantum meruit* claims may appear straightforward for a rescinded contract, the evaluation of benefit is very subjective, so it becomes difficult to apply a standard basis of application. In several cases where benefit was evaluated and held for the plaintiff, the cases were distinguished or over ruled in subsequent cases. Whilst initially plaintiffs sought tangible benefits, recently intangible benefits have been sought and damages were awarded. Hence, there is substantial documented case material for both the plaintiffs and defendants in the argument of *quantum meruit* claims and in particular the claim for benefit and unjust enrichment. Unfortunately, due to the slight differences between cases, that may receive distinguishing treatment, the application in a number of preceding cases is difficult. The subjectiveness of this

\(^{13}\) Renard Constructions Pty Ltd v Minister for Public Works, (1992) 26 NSWLR 234.

kind of applications of this doctrine and the individual assessment made by the judges creates uncertainty in this area. Even different judges presiding over different cases, could use different specific cases for their decisions. The research in this chapter will investigate the assessment of the benefit and the unjust enrichment to a defendant, focusing on a subset of frequently referenced English and Indian cases, with discussions on how these cases have been treated subsequently in the courts.

In England basically, doctrine of quantum meruit is invoked in a particular type of cases i.e., construction cases. Some of the cases included in this discussion can be listed as below. But one thing is very clear that this list is not exhaustive, many more cases can be added into it. As these are relevant case laws for the better understanding of this concept, hence a discussion on these cases is necessary.

In Sabemo case\textsuperscript{15} the factor of benefit and unjust enrichment is addressed. The argument of benefit was difficult, as the defendant could not use any of the work done by the claimant, and they believed there was no benefit, hence no need for compensation. The basis for the claim used in William Lacey (Hounslow) Ltd. v. Davis\textsuperscript{16} case was used in this case, in which the builder, William Lacey, supplied prices to do work on the belief that they would receive the contract. The cost of the pricing of the work would be recovered under the future contract.\textsuperscript{17}

In this case, J. Sheppard\textsuperscript{18} stated:

“Where two parties proceed upon the joint assumption that a contract will be entered into between them, and one does work beneficial for the project, and thus in the interests of the two parties, which work he would not be expected, in other circumstances, to do gratuitously, he will be entitled to compensation or restitution, if the other party unilaterally decides to abandon the project, not for any reason associated with bona fide disagreement concerning the terms of the contract to be entered into, but for reasons which, however valid, pertaining only to his own position and do not relate at all to that of the other party.”

Thus, this case can be summarised in simpler terms. If A does work for B and which he believes is not gratuitous, then B can be expected to reimburse A in a reasonable

\textsuperscript{16} (1957) 1All E.R. 712.
\textsuperscript{17} Akhileshwar Pathak, “Contract Law”, IIM Ahmedabad, ed. 1\textsuperscript{st}, (2011) at. p. 311.
\textsuperscript{18} Supra note 12, at.p.902.
manner. There are of course clarifications and qualifications of this factor in cases such as Sabemo. In this case, the Council’s decision to cancel the project was not attributed to any error or omission by Sabemo and hence they required reimbursement.

Another judgement is there by English court, in which the Court held that properly construed, clause 47 (which was in question in this case), is in the nature of a residual clause. The requirement of notice must be met if payment is to be obtained for the extra work done as a result of the occurrence of events or circumstances. The requirement of written notice, which is so common in contracts, puts the matter on a formal and readily identifiable basis and one can claim on the basis of quantum meruit.

In Pavey and Matthews case the main issue was whether an oral building contract, would be unenforceable under section 45 of the Builders Licensing Act 1971 (NSW) (s45 of the Act), and a builder can bring an action in Indebitatus assumptus. Essentially, Pavey and Matthews worked on Mrs Paul’s house on an oral contract arrangement, where the consideration was to be reasonable. The completed works included an enlarged scope, and subsequently Mrs Paul paid Pavey and Matthews what she considered to be a reasonable sum. The plaintiff sued on a quantum meruit basis.

In this way, success in a quantum meruit case depend not only on the plaintiff proving that he/she did the work, but also on the defendant’s acceptance of the work without paying the agreed remuneration. It is evident that the court is enforcing against the defendant an obligation that differs in character from the contractual obligation had it been enforceable.

Thus, from the analysis of this case it can be inferred that when a claim is based on completed works, it is obvious that the defendant has a real benefit of the works, and this benefit may be assessed. To assess the benefit of a building that was only partially complete, would be to some extent difficult to quantify. In this case, the defendant can

19 Ibid.
20 Jennings Construction Ltd. v. Q H & M Birt Pty Ltd. (1986) 8 NSWLR 18.
22 This line of action can be traced back to 1621 with “Slade’s Case” where the action depended on the fiction that there is a separate and subsequent promise to pay a debt though the debt arises out of a contract. As stated in Pavey and Matthews (1987) BC 8701760.
liquidate the benefit gained by the “contract” works, i.e. the building could be sold and compensation taken from such sale and without any extra cost. This action could occur in extreme circumstances. Pavey essentially demonstrated that it is better for a builder to conduct work without a contract, as the Building Act will prove the oral contract to be unenforceable. From there a quantum meruit claim can result and result in the remuneration for the plaintiff of his reasonable and fair costs for the work. This case has been used in subsequent cases quite extensively, and would appear to be the milestone in general claims of Quantum Meruit.

One more English case\(^2^4\) needs to be discussed here, to understand the application of doctrine of Quantum Meruit. In this case, there was a contract between Renard and the Minister of Public Works for building pump stations. During the course of the two contracts, Renard was not doing progress in his works to the satisfaction of the principal, to the point that resulted in a Show Cause Notice being issued to Renard. Renard responded by issuing a letter.\(^2^5\) After some time, the principal served notices taking over the works, which lead the contractor to commence action against the principal for the wrongful repudiation of the contract. Renard informed the principal that they accepted their action, and asserted that they rescinded the contract, and began arbitration on the lines of a quantum meruit claim. The Court of Appeal held in its decision: “The contract contained ad hoc implied terms and terms implied by law that the principal would give reasonable consideration to the question whether the contractor had failed to show cause against the exercise of the power and if the contractor had failed to do so whether the power should be exercised,\(^2^6\) the court explained clearly that the principal must act reasonably and in good faith”.

This case holds the significance that if a show cause notice is served, and the plaintiff terminates the contract wrongfully, then the defendant will be entitled to his costs to a reasonable extent. This issue was ended in the Supreme Court, and Court of Appeal held that the reasonable costs can not be extended to profits.

Further, Brenner’s case\(^2^7\) is important in this regard. As it was a very complex case and contained several plaintiffs, defendants, and cross claims. That is why, Byrne J noted that the Brenner case had “given me cause to pause, for the case was long and

\(^{24}\) Renard Constructions Pty Ltd. v. Minister for Public Works, BC9203258 at 5.

\(^{25}\) Ibid.

\(^{26}\) Id. at.p.1.

the law was not easy”. In this case the issue was that Brenner and Fenner had supplied services to First Artists Management (FAM). After a time FAM terminated the managers services prior to releasing an album. The manager sued FAM on the basis of a quantum meruit claim, with the value of that to the plaintiff, which had been previously been agreed. Byrne J stated that “Neither there is any requirement that “benefit” for the purpose of the rule of restitution in a claim for payment for services must be an economic benefit, nor there is a requirement that the provider of the services show that any benefit has arisen as a direct consequence of a particular service rendered”.28

As a result of the findings in this case, the benefit to a defendant is extended from one which is real and identifiable, to one that is unusable and not perceived benefit at all. The benefit is said to have the service available to the plaintiff, not necessarily if it can be converted into some other tangible benefit. This extends Sabemo’s case29 where the benefit was held on a proposal that could not be used by the plaintiff. This case has a significant impact on the project management area, as this area can be based on service related contracts where the benefit to the plaintiff is purely in the service provided, hence the party physically being there, not necessary the value of the work they produce. Hence, one would have to investigate and evaluate the parties which they intend to engage for contracts of services, as their performance or work standard will probably not be in question.

In WC Gray (Constructions) Pty Ltd v. Hogan30 the referee found that the contract was unenforceable but that plaintiff was entitled to recover on the basis of quantum meruit. The proceeding returned to the District Court and the judge was prepared to accept the referee’s findings of quantum meruit. However, the judge decided that the quantum meruit amount was overstated as it included a profit margin and did not accurately reflect the value of work performed. Since the quantum meruit amount was less than the amount already paid by defendant. The court ordered judgment in favour of the defendant with interest and costs. In appeal by the plaintiff, the main issue was: Should the quantum meruit award include a profit margin on top of the reasonable costs incurred by the builder?

28 Ibid.at.p. 222.
29 Supra note 13.
Thus, the court held while deciding the issue that in some cases it was reasonable for the value of the *quantum meruit* to be the value of work performed. However when the claim is for goods and services received the usual basis of a *quantum meruit* claim will be a reasonable remuneration.

J.Mason P stated:

“There will be cases where such an approach is called for, but not in relation to the valuation of a claim made on a ‘*quantum meruit*’ for goods and services freely accepted under an arrangement such as the present one in which an intended underlying contract is rendered unenforceable by statute. The correct approach is to determine a reasonable remuneration for the builder, including remuneration which includes a reasonable profit margin.”

Thus, a claim for *quantum meruit* may be for more than the value of a product received. In case where a person has expanded time and effort in providing a product to a customer a reasonable profit margin will be allowed to fairly compensate the person who provided the product. *Quantum meruit* claims have no peer other than the law of negligence or, more recently, the statutory rights flowing from misleading or deceptive conduct.

In assessing the findings of the above cases a basis model can be outlined for subsequent claims. Hence, *quantum meruit* claims may generally be invoked in the following circumstances:-

- Work completed, but with no contract, with no prior agreement to damages;
- Work completed, but before a contract could be finalised, the plaintiff or defendant cancels for their convenience.
- Work is being completed within an agreed contract, but the plaintiff or defendant cancels the contract wrongfully or for their convenience.
- Work is being completed within an agreed contract and the nature and type of the work (be it through variations in circumstances and variation in the market price) becomes significantly different to that in the original contract.

The doctrine of *quantum meruit* under law of contract is such a beautiful concept that requires fairness and reasonableness. This concept promotes the equity of the parties and helps to ensure that if a person provided a service or a good, that person receives
the benefit of the contract. It is very important concept in law because it allows a
court to provide a fair result in an unfair situation.

**DOCTRINE OF UNJUST ENRICHMENT**

**INTRODUCTION**

After discussion of the above mentioned doctrine, here, it is necessary to discuss
doctrine of unjust enrichment. As this concept suffers from a confusion of its
nomenclature.\(^{31}\) Although it is referred to as “quasi-contract” and is considered to be
based upon a “contract implied in law,” it is not a contract at all. It is rather, a legal
fiction described as “an obligation imposed by law to do justice even though it is clear
that no promise was ever made or intended.”\(^{32}\) In contrast with *quantum meruit*,
recovery for unjust enrichment is not commenced upon the “assent” between the
parties. While *quantum meruit* arises out of the expectation of the parties, unjust
enrichment is based upon society’s interest in preventing the injustice of a person’s
retaining a benefit for which no payment has been made to the provider. In a very
important case,\(^{33}\) it was held by the court that to recover under doctrine of unjust
enrichment, the following elements must be proved:

1. **Lack of an adequate remedy at law;**
2. **A benefit conferred upon the defendant by the plaintiff coupled with the
defendant’s appreciation of the benefit *i.e.*, an “enrichment”; and**
3. **Acceptance and retention of the benefit under circumstances that make it
inequitable for him or her to do so without paying the value of it.** Each of
these elements can present complicated problems for the innocent persons.

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\(^{31}\) While the term “unjust enrichment” is commonly used as a label for a remedy, this author finds it
more conceptually satisfying to think of its being the general wrong giving rise to specific equitable
remedies, such as constructive trust, restitution, and equitable lien.


3d DCA 1988).
MEANING OF DOCTRINE OF “UNJUST ENRICHMENT”

Meaning of “Unjust”

Unjust can be termed as something which is not in accordance with the accepted standards of fairness or justice and which is also unfair.

Meaning of “Enrichment”

When a person gains something from another, then it is said that the person is enriched. This enrichment can be both just and unjust.

Meaning of “unjust enrichment”

When a person wrongfully uses other’s property at the expense of other, then it is called “unjust enrichment”.

The doctrine of “unjust enrichment” can be simply termed as:-

“A person who has been unjustly enriched at the expense of another is required to make restitution to the other. The meaning of this line is that if a person has gained benefit from other person and thereby causing loss to the other person, then the person who has gained is required to reimburse the plaintiff equal to the amount of benefit received by the defendant”. It can be better understood by discussing this example: -

“X owns a house and he approaches Y who is a builder to construct a garage for X. The contract between the two is only for the construction of garage. After constructing the garage, Y also constructs driveway outside the house of X. Then X becomes liable to pay the expenses incurred by Y in the making of driveway. Thus, in this situation X is unjustly enriched. Hence he is liable to pay the expenses”.

The doctrine of unjust enrichment states that a person who has been unjustly enriched at the expense of the other is required to reimburse the other party to the extent of the enrichment. Thus, here, arises the necessity to understand the doctrine of unjust enrichment in the Indian scenario and to know how the courts in India respond to the enrichment claimed by the claimant.

DEFINITIONS OF DOCTRINE OF “UNJUST ENRICHMENT”

The doctrine of “Unjust Enrichment” has been explained in various different books in different terms and in brief it means that when a person takes benefit from other
person and does not gives anything in return i.e. the person unjustly enriches himself at the expense of another, this is the theory of doctrine of unjust enrichment.

According to Encyclopaedic Law Dictionary:

“Unjust enrichment is where a person unjustly obtains a benefit at the expense of another. In certain cases where money is obtained by mistake or through fraud or for a consideration which has wholly failed, the law implies a promise to repay it.”34

According to Black Law Dictionary:

“Unjust enrichment35 is the:

a) The retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected.

b) A benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make restitution or recompense.

c) The area of law dealing with unjustifiable benefits of this kind.

According to Oxford Law Student Dictionary:-

“A cause of action developed at the common law and equity, whereby, roughly, a person who is unjustly enriched, either by receipt of value from the plaintiff in circumstances where he or she ought to return it, or by profiting from a wrong done to the plaintiff, is required to pay over the value of that enrichment to the plaintiff.”36

According to Merriam Webster’s Dictionary of Law:-

“The retaining of a benefit (as money) conferred by another when principles of equity and justice calls for restitution to the other party; also: the retaining of property acquired especially by fraud from another in circumstances that demand the judicial imposition of a constructive trust on behalf of those who in equity ought to receive it. It is a doctrine that requires an equitable remedy on the behalf of one who has been injured by the unjust enrichment of another.”37

The rule against unjust enrichment is included in section 70 of Indian Contract Act, 1872 and founded not upon any contract or tort but upon a third category of law, namely, quasi-contracts or restitution.

**BASIS OF DOCTRINE OF UNJUST ENRICHMENT**

The doctrine of unjust enrichment was originally based in English law upon the principle of assumpsit’s or ‘had and received’, and was declared by Lord Mansfield in a famous case,\(^{38}\) that the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money. In the case of Sadler v. Evans,\(^{39}\) he commented that the action for money had and received was: a liberal action, founded upon large principles of equity, where the defendant cannot conscientiously hold the money. The defence is any equity that will rebut the action. The courts of equity covered much ground as the common law action for money had and received, by the eighteenth century, the courts of equity exercised a general jurisdiction to grant relief where it is unjust for a recipient of property to retain the property himself.

**POSITION IN INDIA**

Unjust enrichment is another equitable form of relief that is somewhat similar but different from *quantum meruit*. Some of the law professors would disagree with the distinction between the two. But the basic difference between *quantum meruit* and unjust enrichment is that in unjust enrichment, there may not have ever been any agreement to begin with, where as in *quantum meruit*, there is an agreement but the agreement never specified a price.

“It is now commonly recognised that the concept of unjust enrichment is a pervasive one, and that the principle that restitution will be granted of an unjust enrichment has come into operation in all parts of law. But this recognition is fairly a recent development. Application of the principle grew up entirely independent of each other, especially as between law and equity.”\(^{40}\)

As a result, it has been only in recent years that the legal experts have undertaken to cover more than particular areas of law of restitution. The first, hesitant step away

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38 Moses v. Macferlan (1760) 2 Burr 1005, 1012: (1558-1774) All ER Rep 581.
from the implied contract theory were taken in India in the 1860s in the case of Rambux Chittangeo v. Modhoosoodun Paul Chawdhry, it was held in this case with reference to Pothier and Austin jurisprudence that a claim for contribution from a co-surety was not a contractual claim, that the use of the language of implied contracts was something forced on the common law by the purely unexpected fact that the remedy was framed in the assumpsit and the system like Indian was not dependent on the forms of action could profitably abandon all the talks of implied contracts.

The Indian Contract Act, 1872 followed this line: under the heading of ‘Of certain relations resembling those created by contract’, it includes claims for necessaries supplied to those without contractual capacity, claims for indemnity or contribution, claims to be paid for the beneficial services provided without the intention of making any gift, claims against the finder of goods and claims for the money paid by the mistake. It went on with certain changes through judicial interactions and came to be based more and more on the doctrine of restitution. In India, the principle was developed under section 69 and section 70 of Indian Contract Act, 1872. Within a decade of the passing of the act, it was held that the co-surety claims for contribution was in fact a contractual term after all and the earlier cases discussing its contractual nature, it was said, were delivered before the act came into existence, when legislation had not stepped in the plain language to give different strength and affect to certain relations between the parties out of those moral obligations one to another. A legal fiction had grown up for implying a contract and while as learned expositions of law, they can be read with interest and advantage for practical purposes to the point under consideration they are absolute and irrelevant.

The judicial mind is unconsciously moved by the major speechless promises and in this category of the law; no one should be allowed to enrich himself unjustly at the expense of another. The law so developed by judicial conscience appears to discover obligations to defeat unjust enrichment or unplanned gaining by the restitution. The natural tendency of courts is that whenever and wherever they find unjust enrichment, they order restitution.

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41 (1867) 7 W.R. 377, F.B.
DOCTRINE OF UNJUST ENRICHMENT AND JUDICIAL TRENDS IN INDIA

Legal Provisions under The Indian Contract Act, 1872 and Judicial Response:

**Section 68:** “If a person, incapable of entering into a contract or anyone whom he is legally bond to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.”

For example, A supplies B, a lunatic, with necessaries which are necessary for his survival. A is entitled to be reimbursed from the B’s property.

In Banaras Bank Limited v. Dip Chand, it was held by the court that a creditor can recover money advanced to the minor for necessaries supplied to him/her and can recover the money out of the estate of the minor.

**Section 69:** “A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.”

In Govindram Gordhandas Seksaria v. State of Gondal, the party had agreed to purchase certain mills; he was allowed to recover from the seller the amount of already overdue municipal taxes paid by him in order to save the property from being sold at the auction. Further, it was explained by the court that section 69 does not require that a person interested in a payment should at the same time have a legal proprietary interest in the property in respect of which the payment is made.

In Ram Tuhul Singh v. Biseswar Lal it was observed by the judicial committee while dealing with the rights of the parties making payments: “it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there

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43 Ibid.
44 AIR 1941 All 335.
45 Id. at. p.203.
must be an obligation express or implied to repay. It is well settled that there is no such obligation in the case of a voluntary payment by A of B’s debt.”

In Dakshina Mohun Roy v. Saroda Mohun Roy Chaudhary, the observation of the court was that the money paid by a person while in possession of an estate under the decree of the court for preventing the sale of the estate for recovering the arrears of government revenue may be recovered by him under this section.

In a most recent case the Delhi High Court held that Section 69 of Contract Act, to the extent it is relevant, provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. Therefore, if it can be said that if the person liable for payment of tax does not pay the amount within 30 days from the service of notice of demand, the amount may be recovered by sale of immovable property of defaulter. It was further observed by the court that Section 69 of Contract Act is based upon the doctrine of unjust enrichment so that a person, who is unjustifiably enriched at the expense of another, is made to make restitution. In fact, Section 69 of Contract Act does not require that a person, to be interested in payment, should at the same time have a legal proprietary interest in the property in respect of which the demand is made. The interest envisaged in Section 69 of Contract Act is an interest in order to avert some loss or to protect some interest which would otherwise be lost to the person making the payment. This contractual obligation would also be covered within the expression “bound by law to pay” used in Section 69 of Contract Act. A similar issue came up for consideration before Privy Council in Govindram Gordhandas Seksaria and Another vs. State of Gondal.

Section 70: “Where a person lawfully does something for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

49 Indian Bank v. Gawri Construction Udyog Ltd. (Delhi) 2011(9) AD(Delhi) 439 : 2012(8) R.C.R.(Civil) 3074 : 2011(126) DRJ 569
50 Supra note 44.
51 Supra note 40.
For example\textsuperscript{52}, if A, a tradesman, leaves goods at B’s house by mistake. B treats the goods as if they are of his own and uses that good. Then B is required to or bound to pay the amount to A for the goods.

In Kirorilal v. State of M.P., it was held by the court that the plaintiff’s claim under section 70 could not be successful as nothing positive was done by him to confer any benefit on the defendants. When there is nothing positive done by the plaintiff but he merely refrains from doing something that is not sufficient to entitle him to make a claim under section 70.

In Fakir Chand Seth v. Dambarudhar Bania,\textsuperscript{53} it was held by the court, when a person gives some advance in respect of an agreement which is subsequently discovered to be void, he can recover back the amount not only under section 65, which specifically deals with the such a situation, but he can also claim back the advance under section 70, because the advance payment was not intended to be gratuitous.

In State of Rajasthan v. Raghunath Singh,\textsuperscript{54} Supreme Court held that in view of the facts admitted and proved, the plaintiff is entitled to the restoration of the amount under Section 70 of the Contract Act, though the agreement is invalid. Here, Section 70 of the Contract Act will be applicable and the compensation can be recovered by the party who had performed his part of the agreement which the Government had accepted. Supreme Court upheld the claim under Section 70 in this case and observed that it is justified to order the refund of the amount by the State to the plaintiff along with pendente lite and future interest.

In Niranjan Das v. Orrisa State Electricity Board,\textsuperscript{55} electricity was supplied for nearly three years after the date of expiry of agreement without any gratuitous intention. It was held by the court that consumer was liable for charges for supply of electricity for the said period, but such consumer could not be made liable for minimum charge is after disconnection of electricity supply.

In a recent case:\textsuperscript{56} the Bombay High Court observed that the plaintiff would be entitled to receive and the defendant would be bound to pay reasonable expenses on

\textsuperscript{52} Supra note 41.
\textsuperscript{53} AIR 1987, Orrisa 50.
\textsuperscript{54} 1974 Raj 4, 1973 WLN 424.
\textsuperscript{55} AIR 2004 Ori. 53.
account of that much construction which is done, under Section 70 of the Indian Contract Act which runs as: “Obligation of person enjoying benefit of non-gratuitous act- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

Thus, the plaintiff’s case for any damages on account of the delay by the defendants cannot be entertained. Even the plaintiff’s claim of bringing material for further construction cannot be entertained in view of absolutely no evidence in that behalf. The plaintiff would, therefore, be entitled to further amount, aside from Rs. 6.08 lacs already received by the plaintiff, and a sum of Rs. 4 lacs for the work reasonably done and the expenses reasonably incurred by the plaintiff.

Section 71: “A person who finds goods belonging to another and takes them into his custody is subject to the same responsibilities as that of bailee.”

In Union of India v. Amar Singh, it was held that when the railway administration in Pakistan left the wagon containing goods within the borders of India and the forwarding railway administration took them into their custody, it could not deny liability under sec.71.

In Union of India v. Mahommad Khan, plaintiff’s timber was lying on a piece of land which was subsequently leased out to the defendant. The latter gave notice to the owners of timber to remove it but it was not removed. The defendant then cleared the site and the timber was damaged or removed. The plaintiff’s claim under section 71 was dismissed as the defendant had not taken the goods into the custody.

Section 72: “A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.”

For example, A and B jointly owe 100 rupees to C, A alone pays the amount to C and B not knowing of this fact, pays 100 rupees over again to C. Then C is bound to repay the amount to B.

57 Supra note 42.
59 AIR 1959 Ori. 103: ILR 199 Cut 32 (DB).
60 Supra note 42.
61 Ibid.
In Food Corporation of India v. K. Venkateswara, where the rice millers were paid an amount in excess of the agreed rate because of a mistake in the classification according to quality, they were required to restore the benefit they have gained.

In Dhrangadhra Municipality v. Dhrangadhra Chemical Works Ltd., the court held that it is essential for a plaintiff seeking refund of illegal tax under section 72 of the Indian contract act, 1872, to plead and prove that he would suffer legal injury or prejudice if the restitution is not granted. A plaintiff who has paid alleged illegal tax but has not himself suffered the incidence of tax and has passed it on to the consumers who have borne the burden of tax cannot legitimately contend that refusal of his request for restitution would prejudice him. In such a case the real plaintiff should be those who have actually suffered the burden of the tax. If such pleadings are not put forward, the requirement of section 72 would remain uncomplied with and a plaint not disclosing the cause of action is liable to be rejected under O.7, R.11 of the Civil Procedure Code, 1908.

The Supreme Court also reached a similar conclusion in Mafatlal Industries Ltd. v. Union of India. In this case, the Supreme Court has exhaustively reviewed the lack relating to claims for refund of taxes and has overruled all earlier cases to the extent they are inconsistent with the judgment.

In the case of Associated Cement Company Ltd. v. Union of India, the railway authorities charged extra fare under the mistaken belief that the goods would have to be carried by longer route, they were ordered to return the extra fare by the court.

The unusual thing regarding the issues associated with pleading a claim for relief under unjust enrichment reflects how particularly it is different from the remedy of quantum meruit. The two remedies are not interchangeable. Because one sounds in equity and the other in law, they may not both be pleaded simultaneously for the same claim. The parties must analyze each case carefully before choosing the remedy that applies in their case.

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62 1972 SLR SC 751. 384
63 (1988) 1 GLR 388.
64 (1997) 5 SCC 536.
65 AIR 1998 MP 241, 1998 (1) MPLJ.
66 Bowleg v. Bowe, 502 So. 2d 71 (Fla. 3d DCA 1987).
DOCTRINE OF QUASI CONTRACT

INTRODUCTION AND MEANING OF DOCTRINE OF QUASI CONTRACT

As quasi-contracts are related term with the doctrine of quantum meruit and doctrine of unjust enrichment. Hence, it is mandatory, here, to discuss the doctrine of quasi-contract. It is very logical to discuss this concept because when anyone talks about equity and good conscience, then the doctrine of quasi-contract comes into the picture. A quasi-contract or implied-in-law contract is a fictional contract created by courts for equitable purposes, not for contractual purposes. A quasi-contract is not an actual contract, but is a legal substitute formed to impose equity between the two parties. The concept of a quasi-contract is that of a contract that should have been formed, even though in reality, it was not. It is used when a court finds it appropriate to create an obligation upon a non-contracting party to avoid injustice and to ensure fairness. It is invoked in certain circumstances which are connected with the concept of restitution.

In many judicial systems, under certain circumstances plaintiffs may be entitled to restitution under quasi-contracts. They are used as remedies for:-

- Unjust enrichment;
- Management of another’s affairs; or
- Payment of a thing not due.

Quasi-contracts are defined to be “the lawful and purely voluntary acts of a man, which results in an obligation whatever to a third person, and sometime a reciprocal obligation between the parties.” One authority defines a quasi-contract as “A licit and voluntary act from which obligations are derived subject to a regime close to the contractual one imposing on the author of the act and a third party, not-bound by a contract”.67 The prefix “quasi” is commonly used by lawyers when they wish to lessen, if not to justify, a classification which, though convenient in practice or hallowed by tradition is not supported by logic68. From contracts “implied in fact” i.e., inferred from the circumstances; it is apparently a short step to contracts implied by law or quasi-contract. Here the contractual remedy is granted in circumstances in

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which no agreement can be inferred but where the law regards it as necessary to give a right of action between the parties. In such cases the absence of agreement is immaterial and in some cases the notion of contract is nothing but an outrageous fiction resulting from the use of the name of “Indebitatus Assumpsit’s”.  

Although quasi contracts are not contracts as such, because no agreement is there in between the parties but nobody can be left without any remedy in case of any legal injury or loss. That is why this kind of contracts are introduced under The Indian Contract Act, 1872.

**RATIONALE BEHIND QUASI-CONTRACT**

There is a great confusion regarding the definition of quasi-contract. The conspicuous absence of precise legal definition of quasi-contract led Mr. Jackson to observe that “There is no generally accepted view of what constitutes quasi-contract.” But as soon as the urge was felt to explore the juristic basis of the concept, controversy was born. The first and the most ambitious attempt to provide such a basis was made by Lord Mansfield in Moses v. Macferlan. Thus, it was Lord Mansfield, who is considered to be the real founder of such obligations, explained them on the principle that Law as well as Justice should try to prevent “Unjust Enrichment”, that is enrichment of one person at the cost of another. His Lordship offered this explanation in Moses v. Macferlan.

Prof. Winfield explains it as “liability, not exclusively preferable to any other head of the law, imposed upon exclusively referable to any other head of the law, imposed upon a particular person to pay money to another particular person on the ground of unjust benefit”. Prof. Winfield further explained: “The limits of quasi-contract are not so much untraced as untraceable different names have been adopted by various legal writers for quasi-contracts, which do not posses any element of contract though they are enforceable against a particular person. It is said that the name of quasi-contract is given to them, merely because they resemble to some extent contractual obligations since they are enforceable against a particular person. The name “quasi-contract” is admitted to be most confusing because it is mixed up as one of the species in the

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70 “The rationale of quasi-contract”, (1961) at p.35.  
71 (1760) 2 Burr 1005, 1012: (1558-1774) All ER Rep 581.  
72 Ibid.
genus of law of contract, though they are not contractual at all. *Quasi-contract* may be defined as an obligation other than contract though referred to a particular person, who compels the defendant to return or repay or compensate what he should not and ought not to retain in the eyes of law. Therefore, *quasi*-contracts exist independent of a contract and a tort. It is merely an obligation.

**PRESENT POSITION REGARDING QUASI-CONTRACT**

The present position regarding the theory of *quasi-contract* is not free from doubts. The rationale of *quasi-contracts* is still alleged by writer, judge and lawyers as undetermined. But in no case, it can be doubted that consideration of “*ex acquo et bonum* and justice” concepts is still essential for enforcing a *Quasi-Contractual* obligation.

But it may be remarked here that in 20th century, we can not get the remedy by help of a writ, they have been buried. Today, a uniform process has been prescribed by the passing of judicature acts 1873 and 1875. Therefore there is no need to take the help of a legal fiction today. In 20th century we cannot defend “implied contract” theory upon the ground of procedural convenience and logic. If we rely upon “implied contract” theory, we will have to say that *quasi-contracts* are part of the law of contract, which is not the truth. *Quasi-contract* exists independent of contract. Therefore the compromising view in the context of the rationale of *Quasi-contracts* cannot be supported upon reason. And here, if it is remarked that, “unjust enrichment” theory is exclusively sufficient to explain the true nature and rationale of *quasi-contracts*, it will not be unbelievable and surprising fact: unjust enrichment theory will provide justice effectively and upon a sound basis and further without disturbing the real nature of *quasi-contracts* whereas in the case of “implied contract” theory, judges will be required to maintain its contractual nature which is undoubtedly admitted now as the truth, since *quasi* contract do not contain an element of contract, though enforced against a particular person.73 The supporters of “implied contract” are indebted to Lord Mansfield to this extent that he gave them the real nature and rationale of *quasi contract*, which is practicably adoptable and most convincing. It is submitted that the majority opinion is still in dined to favour Lord Mansfield and appreciate his research in context with the nature and rationale of *quasi* contracts.

73 Kailash Chander Srivastava, The Rationale of *Quasi*-Contract 1961 SCJ 35.
In the latest and most searching study of English *quasi contract* Mr. Goff and Mr. Gareth Jones have accepted its rational as the principle of unjust benefit or unjust enrichment. This principle presupposes three things. First, that the defendant has been enriched by the receipt of a benefit, secondly that he has been so enriched at the plaintiff’s expenses and thirdly that it would be unjust to allow him to retain the benefit. Anyone can be confused while studying these three concepts altogether because these concepts exceed the traditional demarcation between law and equity. That is why, discussion on the position of the *quasi*-contracts in England as well as in India is necessary.

**POSITION OF QUASI-CONTRACTS UNDER LAW OF ENGLAND**

Goff and Jones in “The Law of Restitution” recognize three main classes:-

- where the defendant has acquired a benefit from or by the act of the plaintiff;
- where the defendant has acquired from a third party a benefit for which he must account to the plaintiff;
- Where the defendant has acquired a benefit through his wrongful act.

A distinction is tried to be drawn between genuine *quasi contracts* and those claims whose status as *quasi*-contractual is doubtful in this analysis.

**A. Genuine Quasi-Contracts**

The situations which are generally accepted as genuine *quasi* contracts may for the sake of convenience be considered under six separate points. These are as follows:-

**1. Money paid by one party for the use of defendant**

If one party is compelled to pay money for which the other party is liable, then he may sue the other one for the amount so paid. In such situation, two points must be emphasised. To prove his claim the former must prove:-

a. That he has been constrained to pay the money; and

b. That it is money for which the later was legally liable.

This category of the *quasi contract* in Law of England resembles with the category of *Quasi*-contract as defined in section 69 of Indian Contract law 1872 which deals with Reimbursement by a person paying money due by another, in payment of which he is

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interested: - A person who is interested in the payment of money, which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

2. Money Paid under Mistake

The general rule has thus stated that: “Where the money is paid to another under the influence of a mistake that is upon the supposition that the specific fact is true which would entitle the other to the money, but which in fact is untrue and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover it back”.75

**Five points which are required to be discussed here are as follows:**

1. In order to entitle the plaintiff to recover, the mistake upon which he has acted must be one of the fact and not of law, whereas there is nothing in section 72 of Indian contract act, 1872, to relate with whether the mistake is of law or of a fact.

2. The mistake upon which the plaintiff relies need not to have arisen in connection with any supposed contract.

3. The general rule is that a person who has paid the money has no right to recovery if he knew that the payment was not due. In this case he is not allowed to recover back the money for the reason of carelessness. But there is one qualification of this rule which must be observed, i.e. the money is not recoverable if the court draws the interference that the plaintiff has paid it at his own risk, irrespective of the true state of the facts. Recklessness or indifference may estop the plaintiff, where carelessness will not.

4. Whether the mistake led the plaintiff to believe that he is legally bound to pay money or whether a purely voluntary payment is equally recoverable are some questions that has long troubled the courts. Bramwell B in Aiken v. Short76 had little doubt of the answer- “In order to entitle a person to recover back money paid under a mistake of fact, the mistake must be as to a fact, which, if true would make the person paying liable to pay the money; but not where, if true, it would merely make it desirable that he should pay the money”.

75 Kelly v. solari (1814) 9 M & W 54 at 58.
76 (1856) 1 H & N 210 at 215.
5. A plaintiff may be estopped from relying on his mistake where he has represented to the defendant that the money was in fact due and the defendant has spent which he would not otherwise done, although prima facie he is entitled to the payment.

This kind of quasi-contract in Law of England resembles with section 72 of Indian Contract Act, 1872 but with the difference that the law in India is not making any distinction between mistakes of fact and mistake of law which Law of England actually do.

3. Money Paid in pursuance of Unenforceable Contracts

These contracts include a variety of cases where the plaintiff has paid money to the defendant in pursuance of a transaction which he believes to be a contract, but which actually, turns out to be invalid. These kinds of cases can be grouped mainly into three categories:

- Total failure of consideration;
- Money paid in pursuance of void contracts;
- Money paid in the pursuance of illegal contracts.

4. Money had and received for the use of plaintiff from a third party

For the clear understanding of the above set of quasi contract one can give the following illustration to explain it up:

**Illustration:** Suppose that A pays money to B and instructs B to pay it to C; or that B has in his hands a fund belonging to A and that A directs B to pay C out of this fund. If B fails to carry out his instructions, may C sue B? it is clear that no contract exists between C and B, and it is equally clear that the mere fact that B may be under a contractual liability to A and the A wishes to benefit C will not enable C to sue B, for that C will met at least at common law, by the doctrine of privity. It has nevertheless been held in a number of cases that once B has notified C that he is ready and willing to pay the money, C may sue B in quasi contract if B fails to do so.
One can Claim against the Wrong-Doer

A party, who has suffered a loss through a wrongful act committed against him by the other party, may in certain circumstances be entitled to sue the other party in quasi contract for the money had and received to his use. He may for instance have been compelled by the improper pressure of the other party to pay money which could not lawfully demanded from him.

This kind of quasi contract in Law of England resembles to the coercion part of Section 72 of Indian Contract Act 1872.

CLAIMS BASED ON A QUANTUM MERUIT

In Plinche v. Colburn the court held that the plaintiff was the author of several dramatic entertainments. He was engaged by the defendants who were the publisher of the work called “The Juvenile Library” to write for that work an article to illustrate the history of Armour and Costumes from the earliest time, 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 that claim. Thus, where a party has in the performance of his contract done some work or rendered some services and the further performance has been made useless by the other party, he may recover reasonable compensation for the work or service.

Position of quantum meruit in quasi contract may be illustrated by two types of cases

In first situation, the plaintiff may seek to recover reasonable remuneration for the work done in pursuance of the contract, which has been discharged by the default of the defendant. In such cases quantum meruit may be an alternative to a claim in damages for breach of contract.

The second example is of the use of the quantum meruit as a quasi-contractual remedy is to be found where the plaintiff has rendered services in pursuance of a transaction, supposed by him to be a contract, but which in truth, is without legal validity.

77 (1813) 5 C & P 58: 1 Moo & S 51.
B. Doubtful quasi-contractual Obligations

In a number of cases, where the law provides a remedy, it is difficult to determine whether this is founded upon a genuine, if implied, consent and is contractual, or whether it is independent of the consent and is quasi-contractual. Thus, the following are the most important categories of these cases:

1. Cases where accounts are stated

The plaintiff proceeds upon the assumption that the defendant has admitted a debt to be due to him, when he sues upon an account stated. This remedy can be applicable in two separate sets of circumstances:

On one hand, where the plaintiff and the defendant are having a set off account. On other hand, where plaintiff and the defendant are having some mutual agreement of showing that plaintiff is suppose to receive something from the defendant due to him.

2. Cases where debts are adjudged by the court

The liability to pay a sum adjudged to be due by a court of competent jurisdiction, whether it be an English, or, in certain cases, a foreign tribunal, has sometimes been classified under the head of quasi-contract.\(^{78}\)

3. Cases where amount is due under statutes, bye-laws or customs

Sometime, the courts inferred from the language of the customs, traditions etc. that they have encouraged the claims for money due under statute or bye-law, or by force of customs to be included within the category of the quasi-contracts.

4. Cases where claims are for necessaries supplied to the persons incompetent to contract

Under Law of England, the claim by the plaintiff against the necessaries supplied to a person under incapacity comes under the category of doubtful quasi-contracts. But in Indian law section 68 of Indian Contract law deals with the claim of necessities, which make it a efficient and well developed branch of quasi-contract.

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\(^{78}\) Halsbury Law of England, ed. 4\(^{th}\), at. p. 699.
POSITION OF QUASI-CONTRACTS UNDER INDIAN LEGAL SYSTEM

Although, in India, Indian Contract Act 1872 does not give any idea about the rationale of quasi-contract. Neither it has given any definition nor given the basis of quasi-contract. Section 68 to 72 of the act contains certain instances where a person is legally bound to repay, refund or compensate the money, property or anything which may be assessed in monetary value. The nature and rationale is not the subject matter or sections 68 to 72 of the act.\(^79\)

It is the Indian courts, which have played some important role in reproducing the unjust enrichment theory as the exact rationale of quasi-contracts.\(^80\) Indian law has got nothing like a term \textit{quasi-contracts}, which is an English term.

Sections 68 to 72 of the contract act deals with certain legal obligations, which exist independent of contract. Though the obligations have been put in an Indian contract book, it does not mean that obligation dealt under sections 68 to 72 of the contract act of 1872, are contractual nature though they resemble them to some extent. Section 68 to 72 dealt with those types of obligations, which are covered by English law under quasi-contracts. And upon the same analogy it has been held by Indian judges that sections 68 to 72 give some instances of quasi-contract as it was observed by Mysore High Court that\(^81\) “The tendency of persons to profit themselves at the expense of others, to deny reparation to those who have helped them to appropriate the fruit is not favoured in courts and doctrine of “unjust enrichment” is often invoked to promote the ends of Justice.” The nature of statutory provisions of the contract act prevents the introduction of implied contract theory, though it has been discussed in some cases.\(^82\) Adoption of unjust enrichment theory will be more advisable then implied contract theory and it must be given favourable attention and emphasis because it provides real nature and exact rationale of quasi contract.

\(^79\) Kailash Chander Srivastava, The Rationale of Quasi-Contract 1961 SCJ 35at p.41
\(^81\) Gaviya V. Lingyat, AIR 1975 MYS 65.
\(^82\) Bankey Bheari V. Mahendra, AIR 1954 All 311.
SPECIFIC LEGAL PROVISIONS UNDER THE INDIAN CONTRACT ACT, 1872:-

In a void contract, parties exchange benefits to realise only as there is no binding contractual terms of the exchange. The same happens in the case where a voidable contract is set aside; the exchanges without the support of contractual terms. In some cases, parties may exchange goods and benefits in the hope of getting in a contract that does not materialise. An example is life-insurance companies collecting an advance premium alone with the offer document itself. Should a person be allowed to keep what he gets? *Nul ne doit senrichir aux depens des autres* that is, ‘no one ought to enrich himself at the expense of others’, is an old principle. It has been familiar to every culture.83

In the course of development of common law, it came to be known as the ‘principle of restitution’. Law has several branches today. Most of them were developed in the 20th century. Earlier, there were only limited branches, like contracts, trust, and equity. At that time, the principle of restitution came closer to the contract. As in a contract, there was movement of benefit between the parties. Thus, it was accommodated within contract law as *quasi*-contract, i.e. it is not a contract, but may appear like that.84 Later, common law developed it as a separate field. The development of the field was thus summarized in Fibrosa v. Fairbairn85 by Lord Wright: “Any civilised 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. Such remedies under English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law, which has been called *quasi* contract or restitution”.86

The principle was written down in the Indian Contract Act under Chapter V titled ‘*Quasi-Contract’*. This chapter does not deal with the rights or liabilities accruing from the contract but those accruing from relations resembling those created by contract.87 These relations resembling contract are known as contract implied in law

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84 Ibid.
85 (1943) AC 32.
86 Ibid.
or quasi-contract. It is not a real contract or as it is called, a consensual contract based on agreement of the parties. Fiction of law gave birth to these obligations. It may become necessary to hold one person to be accountable to another even without any agreement between them, on the ground that otherwise he would be retaining money or some other benefit which has 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 such circumstances. In quasi-contracts, liability exists, as per some writers to prevent unjust enrichment and for this the courts do not take notice of the intention of the parties or their agreement. However, the other view is that it rests upon a hypothetical contract which is implied by law. According to this restricted view quasi-contractual liability can, only arise where a contract can be implied by law.

Chapter V spread from section 68 to 72. Before examining the provisions, the following illustrations should be discussed first, so that one can know whether the doctrine of restoring benefit should be applied in these cases.

Illustration 1. A and B are friends. A let his friend use his car for three days. When he returned the car, A demanded Rs. 3000 for the rent for the car.

Illustration 2. A grocer home delivered to its customer. The customer had placed the order on the phone and the store home delivered it. The customer would settle the bill’s at the end of the month. A new delivery boy, by mistake, delivered goods to a wrong address. The recipient consumed the goods and refused to pay for it, claiming that it was the store that had made the mistake by doing wrong delivery.

Illustration 3. A customer was to pay Rs. 70 to a store for his purchase. He tendered a hundred rupee note. The attendant, inadvertently, took the note to be a five hundred

89 ANSON’S “LAW OF CONTRACT”, ed. 23rd, at.p.589.
90 Moses v. Macferlan, (1760) 2 Burr 1005, 1008 per Lord Mansfield; Fibrosa Case 1943 AC 32, 63 per Lord Wright; United Australia Ltd. v. Barclays bank Ltd,(1941) AC 1, 28, per Lord Atkin, Kiriri Cotton Co Ltd. v. Diwani, (1960) AC 192, 204, per Lord Denning.
91 Sinclair v. Brougham, (1914) AC 398, 415, 452 per Viscount Haldane and Lord Summer respectively; Holt v. Markham, (1923) 1 KB 504, 513, per Scrutton L.J.; Re: Diplock (1948) Ch 465, 480.
93 Supra note 15.
rupee note. He gave the customer Rs. 430. The customer collected the cash and his shopping. Minutes later, the attendant realised his mistake. He is demanding the money from the customer.

Illustration 4. A bank, by mistake, credited an account with the Rs. 50,000. The account holder took it as a windfall and spent the money. The bank is demanding the money from the customer.

In illustration 1, A and B are friends. It is understood between the parties that the use of the car is free. In the case of a gift, there is enrichment for one at the cost of other. However, there is no restitution as this is what was intended, whereas in other illustrations, where a person comes to get goods, money, or services, whether by mistake or otherwise, benefits from it, he should compensate the owner for the benefit. ⁹⁴ Consistent with this, there is section 70 under Indian contract act, 1872. Thus, sections 68 to 72 should be discussed for the clear understanding of the provisions of law of contract.

SECTION 68

Essential ingredients of Section 68:-

After going through the bare language of section 68 it can be inferred that the following are the essentials of this section:-

1) Necessaries are being supplied,

2) Necessaries so supplied must be suited to the condition of life of that person to whom they are supplied,

3) Necessaries are supplied to a person who is incapable of entering into a contract or anyone whom he is legally bound to support,

4) The reimbursement is to be claimed from the property of that incapable person.

⁹⁴ Id. at p. 312.
SECTION 69

Essential conditions for liability under Section 69

The essential conditions for liability under this section can be stated as:

1. **One must be interested in making payment**

   The first condition for establishing the liability is that the plaintiff must be interested in making payment. The interest which the plaintiff seeks to protect must be of course legally recognizable. This provision in India is wider than that in English law. In English law, the person making the payment must have been compelled by law to pay the debt or discharge the liability of the other person. In India, it is enough that there is an interest of the plaintiff in making the payment. Allahabad High Court in Munni Bibi v. Triloki Nath\(^5\) held that the plaintiff’s honest belief that he has an interest to protect is enough to provide him reimbursement under this section.

2. **One must not be bound to pay**

   The second essential condition is that it is necessary that the plaintiff himself should not be bound to pay. He should only be interested in making the payment only for the purpose of protecting his own interest. Where a person is jointly liable with others to pay, a payment by him of the others’ share would not give him a right of recovery under this section.\(^6\)

3. **Another person must be under a legal compulsion to pay**

   Thirdly, the defendant should have been “bound by law” to pay the money. The words “bound by law” have been held after some hesitation, to mean bound by law or by contract. It is not necessary that the liability should only be statutory. In a judgment of Privy Council it was held that it is enough that “the defendant at the suit of any person might be compelled to pay”.\(^7\)

   Thus, it has to be kept in mind as held by Madras High Court in Raghavan v. Alameru Ammal,\(^8\) that where a person is morally bound and not legally compellable to pay, he will not be bound to pay the party discharging his moral obligation.

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\(^5\) AIR 1931 PC 112.
\(^6\) Gopinath v. Raghuvansh kumar, AIR 1949 Pat 522.
\(^8\) (1907) 31 Mad 35.
4. **Payment must be made by one party to some other person**

Lastly, the Plaintiff should have made payment to some other person and not to himself. As for example in Secretary of State for India v. Fernandez,\(^9^9\) a certain government was a tenant of a land and paid to itself out of the rent due to the landlord the arrears of the land revenue due to itself, the government could not recover from the landlord. This did not come within the principle of this section as this is not a “payment to another”.

**SECTION 70**

**Essential conditions for liability under Section 70**

The Supreme Court explored the application of this section in State of West Bengal v. B.K. Mondal and sons\(^1^0^0\) and held that the conditions on which the liability under this section arises would be:-

- A person should lawfully do something for another person or deliver something to him;
- In doing the said thing or delivering the said thing he must not intend to act gratuitously; and
- The other person for something is done or to whom something is delivered must enjoy the benefit thereof.

1. **No intention to do the act gratuitously**

One of the purposes of this section is to assure payment to a person who has done something for another voluntarily and yet with the intention of being paid. He should have contemplated being paid from the very beginning. In P.Mudaliar v. Neelavathi Ammal\(^1^0^1\) it was held that the act was not intended to be done gratuitously and hence compensation for the same could be claimed. In Municipal council, Rajgarh v. MPSRTC\(^1^0^2\) also, it was held that the Municipal Council which constructed and maintained a bus stand was allowed to recover some charges from bus operators who used the stand though there was no agreement to that effect.

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\(^9^9\) (1907) 30 Mad 375.
\(^1^0^0\) AIR 1962 SC 779.
\(^1^0^1\) AIR 1937 PC 50
\(^1^0^2\) (1991) MPLJ 910.
2. *Section 70 does not encourage officious interference in the affairs of others*:-

Secondly, the person to whom the act is done is not bound to pay unless he had the choice to reject the services. If a person delivers something to another, it would be open to the later to refuse to accept the thing and return it; in that case section 70 would not come into operation. In other words, the person said to be liable under section 70 always has the option not to accept the thing. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under section 70 arises. In the application to this principle, the courts have had to strike a balance between two factors. These two factors are as follows:-

The rule cannot be used by anybody to make officious interference in the affairs of another. The court will not compel a person to pay for the services which have been imposed on him against his will.

3. **Services should be rendered without any request**

The third necessity is that services should have been rendered without any request. Reasonable compensation may, however, be recovered for the services rendered at request. This has been so held by the Supreme Court in State of West Bengal v. B.K. Mondal & Sons. As this is a leading authority on this point, hence the facts of this case are needed to be discussed here in brief. These are as follows:-

In this case the plaintiff, on the request of an officer of the State of West Bengal, constructed a kutch road, guard room. Office etc. for the use of the Civil Supplies Department of the government. The State accepted the work but tried to escape the liability under the pretence that no contract has been concluded in accordance with the requirements of section 175(3) of the Government of India Act 1935 (now Article 299 of the Constitution of India). The State government further contended that applying section 70 would amount to virtually permitting the circumvention of the mandatory provisions of section 175(3). The Supreme Court, however, made it clear that section 175(3) had no relevance to the case. Section 175(3) did not recognise contracts unless these were duly executed, while section 70 applied only if there was no valid contract. In this case, section 70 applied to the case as there was no valid agreement between the parties. The judge, however, concluded that Mondale and sons and the officers

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104 AIR 1962 SC 779.
never intended to get into a personal contract. Thus, the conclusion of the judge was that there was no contract between the parties paving the way for application of section 70. The Contractor was forced to use his luck with the state under Section 70 of this Contract Act, 1872 and finally, Supreme Court held that the State is liable to reimburse the contractor.

The principle laid down in this case has been reaffirmed by the Supreme Court in another case also.

4. Services rendered should be lawful

The fourth necessity of this section is services should have been rendered lawfully. It should be emphasised here that there must be some lawful relationship between the person claiming compensation and the person, against whom it is claimed, and this relationship should arise by the reason of fact that it has been done for the former which has been accepted and enjoyed by the later.

5. Act done must be non-gratuitous

Fifthly, the person rendering services should not have intended to act gratuitously. The decision of the Madras High court in Damodara Mudalair v. Secretary of State for India is the leading authority. In this case the government repaired a certain tank, which had indicated lands belonging to the government itself and also the lands belonging to the defendants, who were zamindars. The government did not undertake the repairs gratuitously. The defendants had the knowledge of the repairs being done by the government and they also enjoyed the benefit of the repairs which were thus made by the government. It was held that the plaintiff (government) was entitled to recover from the defendants the part of the cost of repairs in proportion to the lands belonging to the defendants.

6. Enjoyment of benefit is necessary

Lastly, for an action under section 70, one of the essential which has got to be proved is that the defendant enjoyed the benefit of the work done or the thing delivered to him by the plaintiff. The voluntary acceptance of the benefit of the work done or the thing delivered is the foundation of the claim under section 70. Thus, to make a

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106 ILR (1895) 18 Mad. 88.
107 Haji Abdullah H.A.S. Dharamsthapanam v. T.V. Hameed, AIR 1985 Ker. 93, at p.96
person liable for enjoying the benefit, it has to be proved that the defendant had a choice of accepting or rejecting the benefit and he preferred to accept the same.

**Quantum of compensation under section 70**

Where a building contractor does ‘extra work’ over and above the work mentioned in the contract, he would be entitled to be paid at the market rate for such extra work.\(^{108}\) The question of whether something is ‘extra’ will be determined by the court on an interpretation of the contract as a whole.\(^{109}\) Compensation is usually at the market price of the goods supplied.\(^{110}\)

Quantum Meruit can be awarded only if the contract does not provide a fixed price for a consideration for the work done.\(^{111}\) In another case, where a formal lease was not executed, C was held to be not entitled to damages for breaches of oral lease but it was held that he was entitled to the return of security deposit.\(^{112}\)

In a recent case\(^{113}\) it was held by the double bench of Delhi High Court that as explained by the Supreme Court in R.K.Mondal’s case\(^{114}\) there are three conditions which attract Section 70 of the Contract Act. Firstly, the person claiming benefit must do something lawfully for another, secondly while doing so he should not intend to act gratuitously, and lastly, the other person enjoys the benefit from or under the act done by the first person. Explaining the meaning of the word “lawfully” which finds a mention in Section 70, the Supreme Court clarified that “There is no doubt that the thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons, who officiously interfered with the affairs of another or who impose on others services not desired by them.”

The Delhi High Court emphasised relying on the above mentioned judgement and observed that it is clear that Section 70 of the Indian Contract Act would have no application where parties have acted pursuant to a contract for the reason the section is founded upon the principle of restitution and prevention of unjust enrichment i.e. equity recognized by Common Law in the words of Lord Wright in the decision


\(^{110}\) AIR 1970 SC 1201.


\(^{113}\) Dabur India Ltd. v. Hansa Vision Ltd. (Delhi) (D.B) 2012(191) DLT 335: 2012(3) BC 809.

\(^{114}\) Supra note 102.
reported in Fibrosa v. Fairbairn\(^{115}\) as: “It is clear that 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, any other which it is against its conscience that it should keep.”

Further, it was explained by the courts that though the terms of Section 70 of the Indian Contract Act 1872 are unquestionably wide, but have to be applied with discretion to do substantial justice in cases where it is difficult to impute to the persons concerned relations created by contract. In other words, if parties are bound by a contract, it is the contract alone which governs their respective obligations and as observed by the Supreme Court in the decision reported in Mulamchand v. State of Madhya Pradesh,\(^{116}\) Section 70, rested on principle of restitution and prevention of undue enrichment, can never be applied if there is a contract between the parties.

**SECTION 71**

Although as between the finder and the owner of the goods, there is no contract, yet the following responsibility has been fixed by section 71, on the finder of goods.\(^{117}\)

**Quantum of compensation and finder’s right of lien under Section 71**

The finder of the goods has no right to sue the owner for compensation for the trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods till he receives it.\(^{118}\)

**SECTION 72**

Liability of person to whom money is paid or thing delivered by mistake or under coercion.- A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.\(^{119}\)

\(^{115}\) (1943) AC 32.

\(^{116}\) AIR 1968 SC 1218.

\(^{117}\) R.K.Bangia, “The Indian Contract Act”, revised by Dr. Narender Kumar, ed. 14th, (2011) at. p. 275

\(^{118}\) Section 168 of The Indian contract act, 1872.

\(^{119}\) Supra note 115. at. p. 277.
Relevancy of mistake of fact or mistake of law under Section 72

Money paid under mistake is recoverable irrespective of the fact that whether the mistake is of fact or of law. The controversy between the High Court Decisions as to whether money paid under mistake of law could be recovered was set at rest by the Privy Council in Sri Shiba Prasad Singh v. Maharaja Shris Chandra Nanadi. The controversy between the High Court Decisions as to whether money paid under mistake of law could be recovered was set at rest by the Privy Council in Sri Shiba Prasad Singh v. Maharaja Shris Chandra Nanadi.120 Under section 72, “The Payment by Mistake” must refer to a payment which was not legally due and which could not have been enforced: the “Mistake” is on thinking that the money paid was due when in fact, it was not due. There is nothing in section 72 to relate with that whether the mistake is of law or of a fact.

Unjust benefit under mistake

The Supreme Court in its decision in Sales tax Officer, Banaras v Kanhaiya Lal Mukund Lal Saraf 121 has accepted this interpretation of section 72, “A certain amount of the Sales Tax was paid by a firm under the U.P. Sales Tax Law on its forward transactions and subsequently to the payment; the Allahabad High Court ruled the levy of the sales tax on such transaction to be ultra virus. The firm sought to recover back the tax money.”

So far as English, American and Australian Laws and their contentions are concerned they do not allow the payments made under mistake of law to be recovered.

Unjust benefit under coercion

The word “coercion” used in this section is used in the general sense and not as defined under Sec.15. Thus, the money paid under pressure of circumstances, such as prevention of the execution of a decree on a property in which the party paying is interested, may be recovered even though “coercion” as defined under Sec. 15 is not established. Further it was held in a case,122 that compulsion of law is not coercion.

120 AIR 1949 PC 297
122 S.S.Sakhar Karkhana Ltd. v. C.I.T., Kolhapur, AIR 2004 SC 4716.
Defaulting party cannot be benefited

For the applicability of section 72 of the Indian contract act, 1872, the plaintiff cannot be permitted to make a profit out of his own wrong.\textsuperscript{123} In Radha Flour Mills Pvt. Ltd. v. Bihar State Financial Corporation,\textsuperscript{124} in recovery of loan and interest from the appellant, there was an accounting error on the part of the Corporation, and as a result Rs. 29,000 could not be recovered from the appellant-debtor. On discovery of the accounting error after a decade and a half, the corporation claimed the amount along with the interest. The Patna High Court held the demand of interest as improper as it would premium on default being committed by the Corporation and hence amounted to unjust enrichment.

Most recently, in Shiv Swaroop Trivedi v. State of U.P.\textsuperscript{125} the court after the analysis of these judgements\textsuperscript{126} held as under: The law on the point can be summarized as: if salary or wages have been paid to an employee by an employer voluntary in bona fide manner without there being any element of fraud or misrepresentation on his part can be recovered from the employee but the same cannot be recovered in two circumstances (a) if an employee has retired or (b) if he is on the verge of retirement. Further, the court has taken into consideration the judgement in Thomas Abraham v. National Tyre & Rubber Co.\textsuperscript{127} The Hon’ble Apex Court held in this case that it is an established principle in common law that an action for recovery of money unduly received is a practical and useful instrument to prevent unjust enrichment. The law implies an obligation to repay the money which is an unjust benefit. So, it may be pleaded on behalf of the authorities that the employee cannot retain any money paid to him by mistake or erroneous considerations.

CONCLUSION

To conclude, it can be said that quantum meruit and unjust enrichment are both causes of action and remedies, and the distinction between the two resulted from the traditional division between courts of equity and courts of law. Usually, contracts

\textsuperscript{124} AIR 2009 Pat. 12.
\textsuperscript{125} AIR 2009 Pat. 12.
\textsuperscript{127} AIR 1974 SC 602 : (1973) 3 SCC 458.
were exclusively adjudicated by courts of law, and *quantum meruit* was a legal cause of action. Under *quantum meruit* the party was granted the value of the work performed as if this value had been promised to him or her in a contract. Thus, the doctrine of *quantum meruit* almost worked as gap filler when some deficiency made implied or expressed contract terms inapplicable. Like all other equitable remedies, unjust enrichment was a cause of action in equity. It was applied only in those cases where there was no sufficient remedy available in the court of law. If there was a contract (expressed or implied) a party had to sue in the court of law. As a result, unjust enrichment was a cause of action available only when there was neither an expressed nor an implied contract. Since there was no contract, no terms of the contract could be enforced. Without enforcing the terms of the contract regarding payment for the work performed, the calculation of the damages for unjust enrichment had to rely upon the value conferred as a means of restoring the balance of equity.

The distinction between the two causes of action has largely been erased now because the courts of equity and law are merged into each other, but the traditional distinction still affects the calculation of restitutionary remedies. Most notably, courts still tend to award restitution based upon disgorgement of value only when *quantum meruit* is not available or is insufficient to compensate the party seeking the remedy. *Quantum meruit* is one measure of restitutionary relief. Restitution is a remedy for the cause of action of unjust enrichment, while *quantum meruit* is one way to value or calculate that remedy.

The principle of quasi contract is often ignored but still it holds a very important place, since the principle is grounded on the principles of justice, equity and good conscience. Although the doctrine of quasi-contract is mentioned in the Indian Contract Act under a new name ‘Of certain relations resembling those created by contract’. Still, the basic nature and essence of the concept remains the same without any drastic change. Hence, quasi-contract forms an integral part of the Law of Contract and it surely comes to help the victim when one party is enriched unjustly over the other.
Through the knowledge of circumstances that lead to quantum meruit claims, practices could be avoided or modified to reduce that chance of ending up in this situation of a claim. If this is not possible, as often case outcomes include events beyond anyone control or fault, then armed with the knowledge of what is a probable or an acceptable argument for quantum meruit, parties can best establish themselves for the best outcome in a claim, whether it be from purely winning point of view or maximising the amount of remunerations received. In the end, most of the parties, only want a reasonable amount for the works undertaken, as no one goes into business to lose money (although it often can be attributed to their own fault). Parties must also recognise that works need to be directed appropriately not to cause additional loss to parties, and if it does, then the resultant losses need to be reimbursed.

The doctrine of unjust enrichment means that no one should be unjustly enriched at the expense of another. It also means that no person should take advantage of position of another person which causes some loss to one party and gain to another party. The concept of unjust enrichment came through English law. In all the cases of unjust enrichment whenever the court feels that one person has gained something at the cost of another person and has not given anything in return, the court makes the person liable and directs the person to compensate or restore the benefits.

The main objective of the research in this chapter is to understand the emerging trends of the judiciary in present Indian Scenario on different doctrines like doctrine of quasi-contract, doctrine of quantum meruit and doctrine of unjust enrichment. Various remedies are available for all these concepts in Indian Contract Act, 1872. Section 68-72 deals with these remedies, like when necessary goods are provided to one person, obligation of a person enjoying benefit of a non gratuitous act, responsibility of the finder of goods, thing delivered to another person by mistake or coercion. The courts also in most of the cases have always tried to give decision in favour of plaintiff in the case of injustice caused to him. Whenever the court feels that the defendant has taken benefit from the plaintiff and has not compensated him, then court directs the defendants to either compensate him or to restore back the benefits received by the defendant. This is known as restitution under Indian contract act,
1872. In section 72 of Indian Contract Act, only thing delivered by mistake or coercion is taken into consideration. Like coercion and mistake there are other ways also like undue influence, misrepresentation, fraud which can be used by a person to take benefit out of another person. So, the provisions related to misrepresentation, fraud and undue influence should also be mentioned under Indian Contract Act, 1872.

Time will tell whether the line of arguments bring changes in this field of law or not. Hence, whether involvement from a plaintiff or defendant perspective, one would need to constantly review and gain further understanding of current cases to ensure that they understand the exposure and entitlements, and hopefully avoid the claim situations.