

Quasi Contract

Sections 68 to 72 deals with "certain relations resembling those created by contract" under Indian contract act, 1872. It incorporated those obligations which are known as "quasi contracts" under English law. It covers cases where the obligation to pay arises neither on the basis of a contract nor a tort, but a person has obtained an unjust benefit at the cost of another.

The quasi-contractual obligations are based on the principle that law as well as justice should try to prevent unjust enrichment means enrichment of one person at the cost of another or to prevent a man from retaining the money of, or some benefits derived from , another which it is against conscience that he should keep.

Thus the principle of unjust enrichment requires:

1st that the defendant has been 'enriched' by the receipt of a benefit :

2nd that this enrichment is at the expense of the plaintiff: and

3rd that the retention of unjust of the enrichment is unjust [mahabir kishore vs. state of M.P.,AIR. (1990)S.C.313]

Strictly speaking, a quasi-contract is not a contract at all. A contract is intentionally entered into. A quasi-contract ,on the other hand , is created by law. In an American case MILLER VS.

SCHLOSS,918N.Y.400,N.E.337, it was observed: "In truth it is not a contract at all. It is an obligation which the law creates in the absence of any agreement, when the acts of the parties or others have placed in the possession of one person, money or its equivalent, under such circumstances that in equity and good conscience he ought not retain it, and which ex aequo et bono (in justice and fairness) belongs to another".

Kinds of Quasi Contract

(1) SUPPLY OF NECESSITIES (Sec.68)

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Ex. A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(2) PAYMENT BY AN INTERSTED PERSON (sec. 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.

Ex. B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the govt. being in the arrears, his land is advertised for sale by the govt. under the revenue law the consequences

of such sale will be annulment of B's lease. B to prevent the sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.

The conditions of the liability under sec. 69 are:

1. The plaintiff should be interested in making the payment. It is not necessary that he should have a legal proprietary interest in the property in respect of which the payment is made. However, often it is used to determine whether plaintiff was interested. Sec. 69 does not invite such judicial limitation that a person who has not an interest in the property can be interested in a payment of that property.
2. The plaintiff himself should not be bound to pay. He should only be interested in making the payment in order to protect his own interest.
3. The defendant should be under legal compulsion to pay.
4. The plaintiff should have made the payment to another person and not to himself.

(3) OBLIGATION TO PAY FOR NON-GRATUITOUS ACTS (Sec. 70)

When 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 things so done or delivered.

Ex. 1. A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay for them to A.

Ex 2. A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Before any right of action under sec. 70 arises, 3 conditions must be satisfied:

- (1) The thing must have been done lawfully.
- (2) the person doing the act should not have intended to do it gratuitously.
- (3) The person for whom the act is done must have enjoyed the benefit of the act[union of India vs. Sita ram, AIR 1977,S.C. 329]

EX. A village was irrigated by a tank. The government effected certain repairs to the tank for its preservation and had no intention to do so gratuitously for the zamindars. The zamindars enjoyed the benefits thereof. Held, they were liable to contribute {Damodar mudaliar vs. secretary of state for India, 1894, 18 Mad. 88}.

(4) RESPONSIBILITIES OF FINDER OF GOODS (Sec. 71)

A person, who finds goods to another and takes them into his custody, is subject to the same responsibilities as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest in the finder and he can retain the goods as his own against the whole world.

Ex. F picks up a diamond on the floor on K's shop. He hands it over to K to keep it till true owner is found out. No one appears to claim it for quite some weeks in spite of the wide advertisement in the newspapers. F claims the diamond from K Who refuses to return. K is bound to return the diamond to F who is entitled to retain the diamond against the whole world except the true owner.

(5) MISTAKE OR COERCION (Sec. 72)

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion.

Ex. (1) A pays some money to B by mistake. It is really due to C. B must refund the money to A. C, however, cannot recover the amount from C is no privity of contract between B and C.

(2) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as is illegally excessive.

Sec. 72 does not draw any distinction between a mistake of fact and mistake of law {D. cawasji & co. vs. state, AIR. 1969 mys.23}

Ex.(1). K paid sales tax on his forward transactions of bullion. Subsequently this tax was declared ultra vires. Held, K could recover the amount of sales tax and that sec. 72 is wide enough to cover not only mistake of fact but also mistake of law.{sales tax officer, benares vs. kanhaiya lal mukand lal safaf, 1959 S.C.J. 53}.

(2) An insurance company paid the amount on a policy under the mistake that the goods had been destroyed by a peril insured against. The goods infact had been sold. Held, the money could be recovered by the insurance company {Norwich etc. society ltd. vs. price W.H. LTD 1934 A.C. 455}

(3) An insurance co. paid the amount on a policy which had lapsed by a reason of non- payment of premiums by the assured. The company knew this fact but it was overlooked at the time of payment. Held, the company could recover the amount "however careless the party (company paying money) may have been omitting to use the diligence to inquire into the fact"{Kelly vs. solari 1841 9 M. &W. 54}