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**68: Claim for necessities supplied to person incapable of contracting, or on his account** — If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person 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.

Illustrations

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

(b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

**69: Reimbursement of person paying money due by another, in payment of which he is 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.

Illustration

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the 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.

**70: 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.

Illustrations

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

(b) 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.

**71: Responsibility of finder of goods** — A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

**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.

Illustrations

(a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) 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 was illegally excessive.

## What is quasi contract?

There are many situations in which a person may be required to conform to an obligation, although he has neither broken any contract nor committed any tort. For example, A has forgotten

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certain articles in B's house. Now B is bound to restore them to A. Such obligations are generally described as 'quasi contractual obligations'.

Quasi contracts are based on the principle of equity and justice. It simply states that nobody shall enrich himself unjustly at the expense of another. In fact, a quasi-contract 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 party 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 to retain it, and which in justice and fairness belongs to another. He then is placed under an obligation to restore or repay for such a benefit.

### **Definitions of Quasi Contracts**

There is no statutory definition of a quasi-contract available either under the English Law or under the Indian Contract Act. Pollock describes quasi contracts as "contracts 'in law' but not 'in fact', being the subject matter of a fictitious extension of the sphere of the contract to cover obligations which do not in reality fall within it". Sir William Anson, a noted English author points out that "circumstances must occur under any system of law in which it becomes necessary to hold one person to be accountable to another, without any agreement on the part of the former to be so accountable, 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 circumstances of this kind."

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Quasi contracts are also called implied contracts. They are implied because they create such obligations which resemble those created by contracts. The essentials for the formation of a contract are absent but as outcome resembles those created by a contract they are called quasi contracts. Under English Law, they are also termed as Constructive Contracts or Contracts in Law, etc. Indian Contract Act terms quasi contracts as ‘certain relations resembling those created by contracts’ and are found under **sections 68 to 72**.

### **Difference between Quasi Contracts and Contracts**

In case of contracts, it is the consent of the party which produce the obligations. But in quasi contracts there is no question of consent, it is the law alone or natural equity which produces obligations. As noted earlier, a quasi-contract is based on the ground that a person shall not be allowed to unjustly enrich himself at the expense of another. There is, however, similarity between quasi contract and contracts in case of claims for damages. In case of breach of a quasi-contract **section 73 second paragraph** of the Indian Contract Act provides for the same remedies (claim for damages) as provided in case of breach of a contract. It reads:

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and has broken his contract.

### **What are different types of quasi contracts?**

You have studied what is a quasi-contract and how it differs from a contract. Now, let us look into various kinds of quasi contracts

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recognised under the Indian Contract Act. Sections 68 to 72 deal with five types of quasi contractual obligations.

### Supply of Necessaries

According to **section 68**, if a person incapable of contracting (which would include a minor, idiot and lunatic) or anyone whom he is legally bound to support, is supplied by another with 'necessaries' suited to his condition in life such person is entitled to recover the value thereof from the property of such incapable person. You should note that the aforesaid claim for necessaries is based upon 'quasi contractual obligations' because a contract with a person incompetent to contract is void-ab-initio. The following two points must, however, be noted in this regard:

- a) The amount is recoverable only from the property (if any) of the incapable person and not from him personally.
- b) The goods or services supplied must be 'necessaries'. For details and case law, one may refer to the discussion on 'contracts with a minor' discussed earlier.

### Payment of Money Due by Another

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.

**Example:** B holds land in Bengal on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears, his land is advertised for sale by the Government. Under the revenue law, the consequences of such sale will be annulment of B's lease. B, to prevent the sale and consequent annulment of his own lease, pays to the Government the sum due from A. A is

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bound to make good to B the amount so paid (**Hazarilal v. Naurang Lal AIR 1924 All 212**).

For the **section 69** to apply, the following essentials must be met:

- i) The person paying must be himself interested in making the payment. Thus, where P left his carriage on D's premises and D's landlord seized the carriage for non-payment of the rent. P paid the rent to obtain the release of his carriage. Held. P could recover the amount from D [**Exall v Partridge (1799) 101 E.R. 1405 KB**].
- ii) The payment should not be voluntary one.
- iii) The payment must be such as the other party was bound by law to pay.

**Example:** The goods belonging to A were wrongfully attached in order to realise arrears of Government revenue due by G. A paid the amount to save the goods from sale. Held he was entitled to recover the amount from G (**Abid Husain v Ganga Sahai AIR 1928 All 353**).

### **Obligations to Pay for Non-gratuitous Acts**

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.

#### **Examples:**

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

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ii) 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.

Under **section 70**, three conditions are required to establish a right of action at the suit of a person who does anything for another:

- i) The thing must be done lawfully.
- ii) It must be done by a person not intending to act gratuitously.
- iii) The person for whom the act is done must enjoy the benefit of it.

**Contracts required to be in writing:** One should note that where there is a mandatory provision in an act requiring contracts to be in writing, an oral contract is void. But it has been held by the Supreme Court that where work has been done and accepted, Section 70 is applicable and payment should be made for the work done (**State of West Bengal v B K Mondal and Sons AIR 1962 SC 779**).

**Responsibility of a Finder of Goods**

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. In such a case, an agreement is implied by law between the owner and finder of goods and the latter is deemed to be a bailee. A finder is, thus, bound to take as much care of the goods found as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quantity and value. Besides, he must make reasonable efforts in finding the real owner.

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**Rights of the Finder of Goods:** A finder of goods has the following rights:

1 The finder is entitled to retain the goods against the whole world, except the true owner. For example, A picked up a diamond from the floor of B's shop and handed it over to B to keep it till the owner is found. In spite of best efforts, the true owner could not be found. After some time, A tendered to B the lawful expenses incurred by him for finding the true owner and asked him to return the diamond to him (A). B refused to do so. Held B must return the diamond to A as A was entitled to retain it against the whole world, except the true owner (**Armory v Delamirie (1722) 93 ER 664**).

2 The finder has lien in respect of any sum which may be due to him on account of expenditure incurred by him in respect of the goods (section 168).

3 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 until he receives it (**section 168**). This right was re-endorsed in the case of **Har Bhajan Lal v. Har Charan Lal, AIR 1925 All 539**.

4 The finder may sell the goods in the following circumstances:

- a) Where the thing found is in danger of perishing.
- b) Where the owner cannot, with reasonable diligence, be found out.
- c) Where the owner has been found but he refuses to pay the lawful charges of the finder.

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d) Where the lawful charges of the finder, in respect of the thing found amount to 2/3rd or more of the value of the thing found.

**What are the liabilities of person to whom money is paid or thing delivered by mistake or coercion?**

A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it (section 72).

**Example**

1 A and B jointly owe Rs. 100 to C. A alone pays the amount to C. Not knowing this fact, B pays Rs. 100 again to C. Now, C is bound to repay the amount to B.

2 A railway company refuses to deliver certain goods to the consignee, except upon the payment of illegal charges. The consigner pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

One should note that **section 72** is based upon the principle of equitable restitution. A person is under a mistake that money is due when, in fact, it is not due. Such a person when he pays under mistake must be repaid. Money paid under mistake is recoverable whether the mistake be of fact or of law. In the case of **Sales Tax Officer v. Kanhaiya Lal AIR 1959 SC 135**, the Supreme Court held that section 72 of the Indian Contract Act is wide enough to cover not only a mistake of fact but also a mistake of law. In this case, the levy of sales tax on forward transactions was held to be *ultra vires* by the Allahabad High Court. The respondent, therefore, claimed a refund of the tax paid

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under mistake of law under section 72. It was held that the respondent was entitled to the refund.

With reference to the word 'coercion' used in this section, it may be noted that the word is to be interpreted in its popular sense to mean oppression, extortion or such other means [**Seth Kanhaiya Lal v. National Bank of India (1913) 40 IA 56 (PC)**].

### **What is Quantum Meruit?**

As discussed earlier, the phrase 'quantum meruit' means 'as much as merited' or 'as much as earned'. The general rule of law is that unless a person has performed his obligations in full, he cannot claim performance from the other [**Cutter v. Powell (1795) 101 ER 573 (KB)**]. But, in certain cases, when a person has done some work under a contract, and the other party repudiates the contract or some event happens which makes the further performance of the contract impossible then the party who has performed the work can claim remuneration for the work he has already done. The right to claim on 'quantum meruit' does not arise out of the contract as the right to damages does. It is a claim on the quasi-contractual obligations which the law implies in the circumstances (**Patel Engineering Co. Ltd. v. Indian Oil Corporation Ltd. AIR 1975 Pat 212**). The action of 'Quantum Meruit' is allowed in Indian Courts under section 70 of the Contract Act.

The claim of 'Quantum Meruit' arises in the following cases:

**1 When a contract is discovered to be unenforceable:** When an agreement is discovered to be void or becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. For example, A, a singer,

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contracts with B, the Manager of a theatre to sing at his theatre for two nights every week during the next two months, and B agrees to pay her Rs. 1,000 for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

**2 When one party abandons or refuses to perform the contract:** Where there is a breach of contract, the aggrieved party is entitled to claim reasonable compensation for what he has done under the contract. For example, C, an owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. Held, P could claim payment on quantum meruit for the part already published. (**Planche v Colburn (1831) 131 E.R. 305**). In another case S, a building contractor, agreed to construct a house for H for \$565. He did work to the extent of \$333 and then abandoned the contract. Afterwards, H gets the work completed another person. Then S cannot recover anything for the work done because he was entitled to the payment only on the completion of the work [**Sumpter v Hedges [1898] 1 QB 673 (CA)**].

**3 When a Contract is divisible:** When a contract is divisible and the party not in default has enjoyed benefit of the part performance, the party in default may sue on a quantum meruit. But if the contract is not divisible, the party in default cannot claim compensation on this basis.

**4 When an indivisible contract is completely performed but badly:** When an indivisible contract for a lump sum is completely performed, but badly, the person who has performed can claim the lump sum less deduction for bad work. For

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example, A agreed to decorate B's flat for a lump sum of Rs. 10,000. A did the work but B complained of faulty workmanship. It costs B Rs. 2,000 to remedy the defect. A shall be entitled to recover from B Rs. 8,000 (Rs. 10,000 — Rs. 2,000) (**Hoenig v Isaacs [1952] 2 All ER 176**).

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