

DISTRICT OF COLUMBIA SCHOOL OF LAW

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RESTITUTION

PROVIDES A BASIS OF LIABILITY  
SEPARATE FROM TORT OR CONTRACT

- A. The Cause of Action is Unjust Enrichment (Quasi Contract)
- B. Elements of the Cause of Action:
  - 1. Defendant has received a benefit. (enrichment)
  - 2. The circumstances under which D obtained the benefit or retains it make it unjust (inequitable) that D should keep it and just (equitable) that the benefit should be transferred to P.
- C. The Alternative Remedies for Unjust Enrichment are:
  - 1. Money Judgment for the value of the enrichment.
  - 2. Constructive Trust imposed on the enrichment or its product.
  - 3. Money Judgment and Equitable Lien Agst. D's Property (Subject to Tracing)
  - 4. Order Subrogating P to Position of Creditor (where P's money or property used to payoff D's creditors).
- D. RESTITUTION is "At Law" if Only Money Judgment is Sought, "Equity" where C/T or E/L is sought.
- E. Money Judgment in Restitution Action is Not Property "Damages" since it is Df's Enrichment and not P's Damage the Court is Awarding.
- F. The Element of "Enrichment."
  - 1. Some advantage or benefit must be gained by D, e.g., money, tangible or intangible property, an improvement upon ones property, the satisfaction of obligations owed by D, the saving of some expense to D.
    - a) Kossian - Saved debris removal expense.

- b) Bakerfield Inn - Property improved with paving.
  - c) Reiver - \$6,000 refund received by D.
2. The enrichment may not need to be Economic. Some courts find enrichment (or waive it as a requirement) where services are requested by D, even though no economic benefit actually results to C. Other courts deny the cause of action because D is not actually benefited, leaving P to promissory estoppel or breach of contract implied in fact, if available.
- a) D requests P to drill for oil on D's property. None is found. Court's hold unjust enrichment because of request.
  - b) Farash - D promised to sign lease and asked that improvements be made immediately to P's property. D never signed lease, oral promise unenforceable as contract (S.O.F.). Held - though D not economically enriched by renovations of P's apartment, D must pay value of requested renovations. Dissent - No enrichment whatsoever.
  - c) Campbell v. TVA: TVA argued no enrichment because TVA didn't request or want microfilms. Held - Used the films and took possession: enriched
  - d) Construction of useless building on property, not increasing value of property, still often held to be an enrichment.

G. The Element of "Unjust" Enrichment: Only where retention of the benefit by D would be unjust, will the court order restitution, i.e., enter judgment agst. D for money, C/T, or E/L.

- 1. Clearly unjust to retain benefit where obtained by mutual mistake, fraud, duress, or tortious misconduct.

2. Where D has requested services from P., courts will often find D has received a benefit which it would be unjust to retain without compensation to P. If no economic benefit to D has resulted, courts often use value of P's services to measure the enrichment.
  - a) Campbell v. TVA.
  - b) Vichery - P built building on D's property but no contract because mutual mistake. Cost P 32k to build, D's property value not increased. Held - Request, and therefore mkt. value of P'S service. (28k)
  - c) Fertilizer - Mutual mistake. D's field increased 6k in value; P's cost to fertilize field: 8k (mkt value). Since request, court awarded 8k.
3. Where No Request By D., circumstance may still be present which lead court to decide retention would be unjust.
  - a) Kossian - D got benefit of debris removal and insurance payment for debris removal. Held - P get insurance payment (less than value of services); otherwise D unjustly enriched.
  - b) Coal delivery - State, with long term \$3 coal contract, mistakenly accepted \$6 coal misdelivered without request to state by RR. Held - State used RR coal, saving state 3\$ per ton; enrichment \$3, not \$6. No request.
4. Volunteers, Officious Intermeddler, cannot recover even though they have enriched D. Not unjust to allow D to retain benefit volunteered or imposed without any request from D.
  - a) Bakersfield Inn. P paved drive at request of potential buyer in possession of Inn. Original

owner had notice of improvements but did not request or acquiesce since no right at time to reject. P volunteered benefit on D.

- b) Spite payment. P paid D's mortgage loan, thinking he would thereby step into creditor's shoes. D not liable though entire loan paid off.
  - c) Bailey - boarded horse on assumption seller or buyer would pay.
  - d) Upton - D, whose house was afire, requested Upton police to get what D assumed was free fire department services. Upton fire department gave what it assumed was free fire service, but sued for value of services when discovered D was in Upton police district but not in Upton fire district. Held - enriched at request, Upton not volunteer. (criticized but no officious intermeddling here).
  - e) Reiver. Co. volunteered 12k payment, the refund due to widow, not co.
  - f) Exceptions to Volunteer Rule.
    - 1. Necessaries to Infants and Destitute.
    - 2. Medical treatment in emergencies.
    - 3. Emergency expenditures to preserve another's property or credit.
    - 4. (Requires Intent to charge and reasonable to expect payment)
    - 5. Emergency Performance of Public Duty D required to meet. (NY)
- H. D's benefit need not come from P.
- 1. Kossian - Money came from Insur. Co., not from P.
  - 2. Simonds - Insur. Co., not P.

I. EQUITABLE REMEDIES IN UNJUST ENRICHMENT

1. CONSTRUCTIVE TRUST: Order of court declaring D a trustee and ordering D to transfer property to P. Enforced as a mandatory injunction.

a) Requirements:

1. Underlying Unj. Enr. Cause of Action.

2. TITLE IN D.

e.g. D steals P's car. D is unjustly enriched but C/T not available. (Use replevin at law) If D trades P's stolen car for 3rd party's boat, P can get C/T over D's new boat because D has title.

3. Traditional: Inadequate Remedy at Law. Almost always present but some courts do not seem to require. Usually D is insolvent and remedy at law held inadequate because other creditors.

b) Advantages: Permits P to obtain specific property rather than a money judgment.

1. Avoids uncertainty of collecting money judgment.

2. Effects preference over other creditors.

3. If property has gone up in value, P gets increase.

4. Allows P to trace to products of original unjust enrichment.

e.g. D embezzles 100k from P and uses to buy house. House now worth 300k. P can get C/T on house.

c) BFP: Where D with title transfers property to bona fide purchaser, court will not impose C/T on property. BFP is innocent, has paid for property,

and had no notice of wrong; BFP not unjustly enriched. P must seek remedy agst D, can get C/T on whatever D received from BFP, if not dissipated.

1. e.g. D fraudulently induces P to sell P's Horse to D, who pays nothing. D trades horse to X for X's boat. P cannot get C/T on horse (P gave up title; X is BFP). P can get C/T on boat.

2. e.g. D, above, gives the Horse to Ann, who has no notice was P's horse that D defrauded P. P can sue Ann and get C/T on Horse. Both P and Ann innocent but she is enriched and unjust to retain because paid nothing. Ann is bona fide but not a purchaser.

2. EQUITABLE LIEN: Order accompanying a money judgment, declaring a lien on property owned by D, enforced as a mandatory injunction to sell property to satisfy judgment unless otherwise pays off judgment by particular date.

a) Frambach. P improved D's house. Since house not purchased with any of P's service or money, C/T inappropriate; can't trace P's services to ownership of house; but can trace to improvements on house. Court could enter judgment for D's enrichment measured by value of P's improvements, and impose E/L, ordering judgment paid by certain date or D must sell property to payoff judgment.

b) D fraudulently induces P to transfer \$1000 to D. D buys car with the \$1000. Car is now worth \$500. P will not want a C/T on car because it will not get him what he lost. He can sue D

for \$1000 judgment and get E/L on car, forcing sale and \$500 paid to P to pay 1/2 of judgment. (C/T is not accompanied by money judgment. It is substitutionary relief).

- c) D fraudulently induces P to part with \$1000 and uses it with own \$1000 to buy \$2000 jewel. Jewel is now worth only \$1000 because of depreciation in jewel market. P cannot get C/T over jewel because his \$1000 cannot be traced to entire jewel, only to 1/2 of it. P will not want C/T over 1/2 of jewel since not worth more than \$500. P will seek \$1000 judgment and E/L over 1/2 interest in jewel. Sale can be forced and 1/2 of proceeds used in partial satisfaction of judgment.
- d) E/L, like a C/T, requires that D have title to property liened.
- e) E/L is always for the entire amount of judgment but property may not be worth that amount. P retain deficiency judgment for remainder.
- f) Entire property against which lien attaches may not be subject to lien. Only that interest to which P's property can be traced. (See jewel e.g.)
- g) Property held by BFP is not subject to E/L.

## INJURIES TO TANGIBLE PROPERTY INTERESTS

### I. MISAPPROPRIATION OF MONEY

#### A. REMEDIES AT LAW: TWO: 1. Conversion

## 2. Unjust Enrichment

1. CONVERSION. Intentional interference with another's right to possession of a chattel, serious enough to justify judgment for full value of the chattel.
  - a) Money is a chattel, personal property, but carries title with it, so that whoever is in possession also has title.
  - b) Ordinarily, money is not converted, unless: p can show D had an obligation to keep or leave P's money intact.
    1. P loans \$100 to D. D refuses to repay loan - no conversion.
    2. D embezzles or steals from P -- conversion since D had obligation to leave P's money intact.
    3. D agrees to deliver to P \$100 owed by X, but uses it -- conversion.
  - c) Advantage of remedies for conversion of money -- Judgment may be for the same amount as a judgment in unjust enrichment but punitive damages can be awarded.
  - d) Disadvantage - Conversion is an action at law and no equitable remedies - no C/T, E/L, or tracing.
2. UNJUST ENRICHMENT
  - a) Need only show enrichment and wrongful taking or retention of P's money.

b) Even if D dissipates P's money, still liable on suit for unjust enrichment, for the amount taken. No Equit. Remedies because dissipated, but can get judgment for \$ value at law. (D enriched and unjust not to restore value to P).

c) No Recovery Against BFP

1. D steals \$100 from P and pays D's valid debt to X. P can sue D but cannot recover from X, even if X still has the same \$100. X has no notice and paid value for \$100 (extinguished D's debt). Since the equities between P and X are equal, the law (title) prevails.

2. X steals P's \$100 and gives to friend. Friend is unjustly enriched even though no notice: gratuitous donee.

3. EQUITABLE REMEDIES for misappropriation of money.

a) CONSTRUCTIVE TRUST - MUST specifically identify P's misappropriated \$ or trace P's \$ to its product. Court will not impose a C/T on D's own money or own assets not purchased with P's \$.

b) Tracing is always involved where \$ have been misappropriated because by time of suit, D has either deposited the specific \$ taken or has purchased something. The bank

deposit credit or the property are the product of the \$.

c) Where P can trace \$ to product, C/T will be imposed on product.

1. e.g.: X embezzles 5k and uses to purchase 50k life insurance, spouse the beneficiary. X dies. If P can locate the 50k proceeds from insur. co., can sue surviving spouse and obtain C/T, since spouse is a gratuitous donee. (Some limit P to 5k).

2. D embezzles 100K and pays off creditors. There is no product of the 100k. It is gone. Courts will not trace to D's other assets.

d) Requirement that Remedy at Law be inadequate: Many courts do require. Where D insolvent, courts consider remedy at law inadequate because other creditors will prevent P's collecting.

1. e.g.: Wealthy D embezzles 10k and purchases car. C/T on car may be ordered even though remedy at law is perfectly adequate.

2. e.g.: Marcus v. Otis. D's took Corp. \$ and bought stock; sold stock for profit.

Could get C/T on profits if not dissipated.

e) Pro Rata C/T. If D takes P's \$ and uses P's \$ and D's own money to purchase asset, P can obtain a pro rata C/T.

1. D takes 33k from P and uses with 66k of own to buy house, P can get constructive Trust ordering D to convey a 1/3 interest in house to P.

f) EQUITABLE LIEN. Where P's money used to improve assets already owned by D, P can get E/L, but not a C/T since the asset was not obtained with P's money.

1. If P's money used to purchase all or part of property belonging to D, P can get C/T but may choose E/L instead if value of property has dropped below amount taken.

a) e.g.: D takes 33k of P's money and with 66k of D's money own buys 100k shares of stock, which drops to 20k. P could get C/T over 1/3 of stock, but would choose judgment for 33k and E/L on 1/3 of stock.

4. COMMINGLED FUNDS: Where P's funds are commingled with D's, court will grant an E/L, for full amount misappropriated, against the commingled account and any property purchased with funds withdrawn from the commingled account.

Where D is a CONSCIOUS WRONGDOER, P has a choice. P can obtain an E/L as above, or a C/T on a pro rata share of the commingled account and anything purchased with funds withdrawn from the commingled account.

- a) e.g.: D deposits \$1000 of P's money into account having \$9000 of D's own money. D withdraws \$5000 to bet on race and wins 80,000 dollars. P can get judgment \$1000 and E/L against account and the \$80,000. If D was CONSCIOUS WRONGDOER, P can get pro rata C/T against account and winnings. (i.e. C/T on \$500 in account and on \$8,000 of winnings).

5. LOWEST INTERMEDIATE BALANCE RULE:

Where withdrawals from commingled fund reduce balance below the amount taken from P, E/L will be limited to LOWEST INTERMEDIATE BALANCE. Where D put in own or others money to bring balance back up, E/L (or C/T) will not apply to restored balances, only to lowest intermediate balance.

- a) e.g.: If in example above, D loses at the track and then withdraws and loses \$4500 more, balance is down to \$500, less than \$1000 taken from P. If D deposits \$9500 of

own money, P can get a pro rata (1/10) C/T or an E/L only against \$500.

b) e.g.: If D takes \$5000 of P's money and adds to \$5000 of own money, then withdraws and dissipates \$8000, E/L attaches to only \$2000 since P's money is not traceable to later deposits by D of other money. C/T would be imposed on only 1/2 of the \$2000, P's pro rata share of the commingled account.

6. Commingling Money of Several Claimants - P is entitled to pro rata share in fund.
7. The above rules represent the Restatement view and trend of modern cases. Some court follow a FIFO rule and some use presumptions as in Hallets or Oatway cases.