

RESTATEMENT OF THE LAW  
OF

RESTITUTION

QUASI CONTRACTS  
AND  
CONSTRUCTIVE TRUSTS

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## RESTITUTION

rescission of a transaction by which he transferred land which is still retained by the transferee. In other cases, a claimant has an election to obtain money damages at law or to obtain specific restitution in equity (as to which see Part II). It is not within the scope of the Restatement of this Subject to state the rules determining whether equity has jurisdiction, either exclusively or concurrently.

## Ch. 1

## INTRODUCTORY MATTERS

### Chapter 1

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### TOPIC 1. UNDERLYING PRINCIPLES

*Introductory Note:* The rules stated in the Restatement of this Subject depend for their validity upon certain basic assumptions in regard to what is required by justice in the various situations. In this Topic, these are stated in the form of principles. They cannot be stated as rules since either they are too indefinite to be of value in a specific case or, for historical or other reasons, they are not universally applied. They are distinguished from rules in that they are intended only as general guides for the conduct of the courts and are not intended to express that universality of application to particular cases which is characteristic of the statements made in subsequent chapters.

## § 1. UNJUST ENRICHMENT.

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

*Comment:*

*a.* A person is enriched if he has received a benefit (see Comment *b*). A person is unjustly enriched if the retention of the benefit would be unjust (see Comment *c*). A person obtains restitution when he is restored to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money. Ordinarily, the measure of restitution is the amount of enrichment received (see Comment *d*), but as stated in Comment *e*, if the loss suffered differs from the amount of benefit received, the measure of restitution may be more or less than the loss suffered or more or less than the enrichment.

*b. What constitutes a benefit.* A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss. The word "benefit," therefore, denotes any form of advantage. The advantage for which a person ordinarily must pay is pecuniary advantage; it is not, however, necessarily so limited, as where a physician attends an insensible person who is saved subsequent pain or who receives thereby a greater chance of living.

*c. Unjust retention of benefit.* Even where a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor. Thus, one who improves his own land ordinarily benefits his neighbors to some extent, and one who makes a gift or voluntarily pays money which he knows he does not owe confers a benefit; in neither case is he entitled to restitution. The Restatement of this Subject states the rules by which it is determined whether or not it is considered to be just to require restitution.

*d. Where benefit and loss coincide.* Ordinarily the benefit to the one and the loss to the other are co-extensive, and the result of the remedies given under the rules stated in the Restatement of this Subject is to compel the one to surrender the benefit which he has received and thereby to make restitution to the other for the loss which he has suffered. Thus, where a person who is indebted to another makes an overpayment under a mistake of fact, the payee would be unjustly enriched by the amount of the overpayment if he were permitted to keep it and the payor would be unjustly deprived of that amount if he were not permitted to recover it. So also, where a person is induced by the fraud of another to make a gratuitous conveyance of land to him, the transferee would be unjustly enriched and the transferor unjustly deprived of the property if the transferee were permitted to keep it; in such case the transferor can charge the transferee as constructive trustee of the land for him, and compel him to retransfer the land.

*e. Where benefit and loss do not coincide.* There are situations, however, in which a remedy is given under the rules applicable to this Subject, where the benefit received by the one is less than the amount of the loss which the other has suffered. In such a case, if the transferee was guilty of no fault, the amount of recovery is usually limited to the amount by which he has been benefited. Thus, if a person's chattels are incorporated into the land of another without the other's knowledge, the owner of the land is liable, if at all, only to the extent to which its value has been increased, although the value of the chattels was greater (see § 42). The amount of recovery, however, is not invariably determined by the value of what has been received. In some cases the value of what is given is determinative, as where, because of fraud or breach of contract, services or chattels are given, the value of which is greater than the amount by which the recipient's estate has been increased (see §§ 151 and 152).

In other situations, a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust. In such cases, the defendant may be under a duty to give to the plaintiff the amount by which he has been enriched. Thus, where a person with knowledge of the facts wrongfully disposes of the property of another and makes a profit thereby, he is accountable for the profit and not merely for the value of the property of the other with which he wrongfully dealt (see § 151). So, also, where a person in a fiduciary relation to another makes a profit in connection with transactions conducted by him as fiduciary, he is ordinarily accountable to his beneficiary for the profit, al-

though the beneficiary suffered no loss (see Restatement of Agency, § 388, and Restatement of Trusts, § 203).

On the other hand, a person who has been unjustly deprived of his property or its value or the value of his labor may be entitled to maintain an action for restitution against another although the other has not in fact been enriched thereby. Thus, a person who refuses to return goods for which he innocently paid full value to a thief is liable to the owner for their full value, not only in an action of tort, but also in the quasi-contractual action of general assumpsit (see § 128). Likewise, a physician who attends and skillfully but unsuccessfully treats an unconscious woman, the victim of an accident, is entitled to recover the value of his services from her husband or, under some circumstances, if she dies, from her estate, although she was spared no pain and the husband or the estate was spared no expense (see §§ 114 and 116).

## § 2. OFFICIOUS CONFERRING OF A BENEFIT.

A person who officiously confers a benefit upon another is not entitled to restitution therefor.

### *Comment:*

*a.* Officiousness means interference in the affairs of others not justified by the circumstances under which the interference takes place. Policy ordinarily requires that a person who has conferred a benefit either by way of giving another services or by adding to the value of his land or by paying his debt or even by transferring property to him should not be permitted to require the other to pay therefor, unless the one conferring the benefit had a valid reason for

so doing. A person is not required to deal with another unless he so desires and, ordinarily, a person should not be required to become an obligor unless he so desires.

The principle stated in this Section is not a limitation of the general principle stated in § 1; where a person has officiously conferred a benefit upon another, the other is enriched but is not considered to be unjustly enriched. The rule denying restitution to officious persons has the effect of penalizing those who thrust benefits upon others and protecting persons who have had benefits thrust upon them (see § 112).

Chapters 2 to 5 of the Restatement of this Subject deal with situations in which a person has conferred a benefit upon another as the result of mistake or coercion or at the other's request or in an emergency. In all of these cases the conduct of the transferor is not officious and where recovery is denied it is denied for reasons not connected with officiousness. Thus, although a benefit conferred in the performance of a contract which is avoided for illegality may not be the basis for restitution, recovery is denied because of a policy which requires that the payor be penalized; the denial of restitution to a person who by mistake has improved the land of another is because of a policy which protects the owner of land against paying for improvements which he does not want or for which he may be unable to pay. Except in the situations dealt with in Chapters 2 to 5, a transfer of property to another, the performance of services which benefit another, or the payment of another's debt is ordinarily officious, and restitution is denied in accordance with the principle stated in this Section.

### § 3. TORTIOUS ACQUISITION OF A BENEFIT.

A person is not permitted to profit by his own wrong at the expense of another.

*Comment:*

a. The principle stated in this Section underlies the more specific rules stated in Chapter 7, by which in many cases a person who receives property as the result of a tort committed by him against another has a duty of compensating the other for the loss suffered, at least to the extent of the benefit received. The principle has not yet crystallized into a rule since, as is indicated by Chapter 7, it is only in certain types of situations that restitution is permitted. The desirability of permitting restitution in such cases is ordinarily not so obvious as in the cases where there has been no tort since the tortfeasor is always subject to liability in an action for damages and, as stated in the Introductory Note to Chapter 7, the right to maintain an action for restitution in such cases is largely the product of imperfections in the tort remedies, some of which imperfections have now been removed.

## TOPIC 2. PROCEDURE

### § 4. REMEDIES.

In situations in which a person is entitled to restitution, he is entitled, in an appropriate case, to one or more of the following remedies:

- (a) the use of self-help to regain or to retain possession of land or chattels;
- (b) a judgment by a court of law enforced by a writ directing a sheriff or other officer of

- the court to seize and restore the subject matter to him;
- (c) a decree by a court of equity that the title or possession of the subject matter be transferred to him or that a cause of action or other right be reinstated;
  - (d) a decree by a court of equity that a lien upon the subject matter or its proceeds be established, enforced, discharged, or reduced;
  - (e) a judgment or decree by which the transferor is subrogated to the position of another claimant against the transferee;
  - (f) a judgment at law or decree in equity for the payment of money, directly or by way of set-off or counterclaim.

*Comment:*

a. The Restatement of this Subject deals with all situations in which a person is entitled to restitution. However, it deals primarily with substantive rights and states the rules with respect to remedies only to the extent that the existence of the remedy may determine the existence of substantive rights. Even in Part II which deals with constructive trusts, the Restatement of this Subject does not deal with the procedure by which the remedy named "constructive trust" is obtained nor, except in special instances, does it state rules by which it can be determined whether proceedings to obtain restitution can be maintained by an action at law or by a suit in equity. It deals only by cross-reference to the Restatement of Torts with the remedies of self-help and those afforded by actions of tort such as replevin, ejectment, detinue and trover.

*Comment on Clause (a):*

b. *Self-help.* Self-help is ordinarily privileged against a person who has committed a tort by fraudulently or forcibly obtaining possession of land or chattels or against one who retains them without claim of right. The conditions under which a person is privileged to use self-help in regaining such things are stated in the Restatement of Torts, §§ 88-111 and § 198. Except where the rule has been modified by statute, a person who, being entitled to the possession of land or chattels, recaptures them when he is not privileged so to do or by the use of unprivileged means, is not under a duty of restitution to the other, although he is liable for the tort committed in the recapture; in such cases, whether or not the person using self-help was guilty of a tort, the other had a duty of surrendering the subject matter and hence is not entitled to restitution.

The enforcement of a possessory lien is one form of self-help, as where a public carrier who has accepted goods from a person having apparent authority to act for the owner, in order to obtain compensation for its services, retains possession of the goods or, as permitted generally by statute, sells the goods.

*Comment on Clause (b):*

c. *Specific restitution in actions at law.* The common law actions by which land or chattels are returned to a person entitled to the possession of them are the tort actions of ejectment, replevin and detinue. Although in an action of replevin the plaintiff seeks the return of specific goods, yet ordinarily under modern statutory procedure the defendant, by giving a bond, can prevent the plaintiff from obtaining the goods in specie. In the action of detinue, now obso-

lete in most States, the surrender of the goods is at the election of the defendant. It is not within the scope of the Restatement of this Subject to state the conditions under which such actions can be maintained, since such actions are primarily for damages based upon wrongs and are not merely restitutionary.

*Comment on Clauses (c), (d) and (e):*

*d.* Where a person has the title to property which it is his equitable duty to convey to another on the ground that otherwise he would be unjustly enriched, a constructive trust arises in favor of the other who under some circumstances can obtain specific recovery of the property in a proceeding in equity. For a statement of the situations in which this is granted see § 160 and especially Comments *d*, *e* and *f* on that Section. Where a person is under a duty of restitution because he has acquired possession of the subject matter without obtaining title to it, he is not chargeable as constructive trustee. In such cases, however, if the subject matter is a unique chattel or if there are circumstances which would make the payment of money damages inadequate, or, in case of land, if ejectment cannot be maintained for procedural reasons, equity will decree specific restitution.

The proceedings in which specific restitution is sought may consist of (a) a bill for the specific restitution of property; (b) a bill for the reformation of a transaction, in which either a conveyance or reconveyance is asked or the cancellation of a deed is sought; (c) a bill to cancel a release or surrender; (d) a bill of review or other bill attacking a prior judgment or decree, the final judgment or decree having the effect of transferring the subject matter or discharging a

claim created by the prior judgment; (e) a motion for restitution after the reversal of a judgment; or (f) any other proceeding which attacks the validity of a conveyance or transaction creating a right.

As to the circumstances under which a court of equity will act in the creation and enforcement of equitable liens, see § 161; as to subrogation, see § 162.

*Comment on Clause (f):*

*e. Judgment for money.* A person, who has a right to restitution other than the mere enforcement of an equitable lien, whether or not he is entitled to specific restitution, can obtain a money judgment against the recipient of the benefit, except that a person who has acquired title to the subject matter innocently can avoid an adverse personal judgment by an offer of restitution continuously kept open (see Comment *a* on § 63 and Comment *a* on § 123), and except that a transferee of land, upon the rescission of the transaction, is not subject to liability for its value if he can restore the land. Although ordinarily such money judgment is obtained by an action at law, a decree for money will sometimes be rendered by a court of equity. The right to a money judgment, either in equity or at law, because the transaction has created an equitable interest in a specified subject matter, is dealt with in §§ 160-162.

It is not within the scope of the Restatement of this Subject to state the conditions under which an action of tort can be maintained for a conversion, although this remedy is often restitutionary in effect (see Restatement of Torts, §§ 216-278). As to set-off and counterclaim, see note to § 149.

## § 5. FORMS OF ACTION.

The appropriate proceeding in an action at law for the payment of money by way of restitution is:

- (a) in States retaining common law forms of action, an action of general assumpsit;
- (b) in States distinguishing actions of contract from actions of tort, an action of contract;
- (c) in States which have statutes providing for the abolition of the distinctions between forms of actions, an action in which the facts entitling the plaintiff to restitution are set forth.

*Comment:*

a. As stated in the Introductory Note to this Part of the Restatement, actions at law for restitution because of unjust enrichment originated in the fiction that the person receiving the benefit had promised to pay for it and this fiction has continued to affect the form of action. In substance, the action is different from an action brought to secure damages for breach of contract, since the plaintiff seeks to be put back into his original position rather than to recover damages for the breach of promise. It is distinguished from the tort actions of trover and replevin, since in trover the element of benefit is unnecessary and in replevin the plaintiff seeks recovery because of the wrongful taking or detention by the defendant. In States in which statutes provide for the abolition of forms of action the distinction is in substance preserved; a statement of facts which shows that there is a right to restitution coupled with a request for it is ordina-

rily treated for the purposes stated in Comment *b* as if it were an action upon a contract.

b. The nature of the action becomes important in a variety of situations. Thus the period during which the Statute of Limitations runs may be, and ordinarily is, different in an action of tort from that which applies in an action for restitution. A person having a claim for restitution can set it up by way of counterclaim or set-off, if this is permitted for "debts" or other "contractual obligations" (see note to § 149). Statutes permitting the assignment of causes of action based upon contracts and those regulating the joinder of causes of action of contracts, the issuance of attachments for breach of contract and the like, are ordinarily construed as being applicable to quasi contractual causes of action. Such a cause of action is provable under the National Bankruptcy Act. Death does not terminate a claim for restitution even though it may terminate a tort claim (see § 149).