

Law of restitution in the united kingdom

Law



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Restitution is that branch of the law of obligations, which deals with providing damages against unjust enrichment that was at the cost of the plaintiff. Restitution will also cover the wrongs or faults done against the plaintiff. In other words, restitution requires the defendant to avoid any unjust enrichment that was made at the expense of the plaintiff. English law considers restitution as the basis of obligation. In Scotland, courts provide for restitution, in some cases, in the event of an unlawful transfer of money that generally does not entail a legal cause.

Unjust enrichment would be inequitable for the defender; and Canadian and Australian courts also recognize restitution . It can be described as the refund of money or an object, which the defendant had appropriated from the plaintiff by committing an illegal act. Thus, restitution denotes the return of the status quo. The victim will be placed in the same position in which he was, before the crime took place. In criminal law restitution can be referred to as sentencing remedy available for the plaintiff, in which the defendant has to pay back what he had taken from the plaintiff as part of that sentence.

In civil law, restitution is a remedy for the plaintiff which places the plaintiff in the same position that existed before the breach occurred. The fundamental objective of restitution is to restore fairness and to prevent any unjust enrichment. In contractual obligations, restitution plays a key role, when one party does something that benefits another party, but fails to obtain any benefit just because the contract itself was found to be defective. At that juncture, the courts by resorting to the restitution principle, order the

beneficiary to pay the specified amount for the benefit he had received from the other party to that contract .

The law of restitution gained considerable importance with respect to the judiciary. It is to examine whether the restitutionary damages can increase the customary contractual remedies that are to be found in cases of breach of sale contracts. In the case of *Surrey County Council v. Bredero Homes*, the Court of Appeal refused to award a claim for profit recovery. The profits in this case were alleged to have been as a result of a breach of contract for sale . The Supreme Court of Israel in 1989 had decided to the contrary by allowing restitutionary remedy in the case of *Adras Building Material v.*

Harlow & Jones GmbH. This ruling had constituted a landmark judgement in the law of restitution . The general legal principles do not permit such recovery of the profits of the promisor in the event of any breach having occurred in the contract. In order to enable the recovery of profits, such breaches must bring about a concurrent cause of action. Similarly, a breach of fiduciary duty also permits the recovery of profits. In exceptional cases only common law principles allow such recovery.

In those cases, where the profits realised equal the lost profits of the promisee, or in cases where the contract was made for the sale of specific and distinguishable goods such as land; the courts allow the recovery of the profits of the promisor under restitutory claims . The ruling in *Adras* treats restitutory damages as a general remedy for violations of contracts of sale of goods. It posed a challenge to the traditional principles of common law for recovering profits for breaches of contracts for sale .

Contracts that entail the performance of some unlawful act cannot be enforced, and such instances are beyond the purview of punitive law or the law of restitution. In the event of such an illegal contract having been completed by one of the parties, sanction will be mainly seized with denying restitution in any manner. There is another characteristic involved in this differentiation. If permitting restitution is equivalent to enforcing the contract, then refusing restitution cannot be specifically deemed to be a punitive measure.

As such the law of contracts precludes enforcement of the contract, and the law will not, in any fashion, mitigate its effectiveness by allowing enforcement in some other manner. However, it is undeniable that the preclusion of restitution is a punitive measure, especially if the outcome of restitution and enforcement can be discerned effortlessly; if restitution is fairly simple to engender and involves only assets that had been procured by the defendant from the claimant; and if the refusal of such restitution would unjustly enrich the defendant to the detriment of the plaintiff.

In other words, the claimant's wrongdoing is at times considered to be an affirmative defence by restitution, which is at variance with the manner in which contract or tort regards such behaviour. There are many affirmative defences to restitution, but the claimant's bad behaviour invites punishment for the plaintiff, and is not designed to accord protection to the defendant. Such punishment is more appropriate than the usual legal sanctions, due to the punishment that is the consequence of such deprivation.

A fine or term in prison can be construed to be a random and superfluous injury inflicted on the wrongdoer. However, if there is a denial of restitution, then the wrongdoer has to directly suffer the consequences of the wrongs done by him. All the same the question remains, as to whether such punitive measures have deterrence . In the course of settling a claim against a wrongdoer by an innocent party, the remedies awarded by restitution are usually quite liberal.

It had been the practice to contend that there was nothing punitive in such responses. Nevertheless, restitution differs from law, in as much as it does not extend assistance to a specific category of offenders. Such withdrawal of assistance, namely, the rejection of a plea to hear a properly researched and presented claim could resemble a punitive action; if its outcome is to benefit the other party . Such punitive restitution has a hidden and an outstanding result.

With respect to punitive restitution that is prominent, the court will declare that some people being tried by it, will not be provided with the relief being claimed by them, because their misconduct has precluded them from receiving the assistance of the court. It is also made very clear that such denial is not on account of any lacunae in stating a cause of action . Obviously, the purpose of such decisions is to punish the party that had indulged in misconduct.

However, the fact that these decisions relate to the punitive restitution is unclear, due to the manner in which such cases are classified. In general, these cases fall under the labyrinth of illegal contracts, and this camouflages

the fact that these cases are basically restitution claims . Such remedial measures seem to be welcome, because of the perception that they entail punitive consequences; nevertheless, the presence of conceivable reasons that attempt to justify the defendant's perceived wrongdoing, indicates that the remedy would have remained unaltered even in the absence of punishment.

Therefore, if the defendant has committed a fault, in whatsoever manner; if the remedy relating to the loss caused, is evaluated in terms of the loss undergone by the claimant; and if the liability of the defendant is in excess of the advantage obtained, then any elucidation that involves liability that is fault based, will be not only to the point but also more convincing compared to any clarification that such remedy seeks to be punitive, in addition to being aimed at unjust enrichment .

Such a line of approach involves the satisfaction of two conditions, in all instances of punitive restitution. The party that emerges the beneficiary should be better off financially, in comparison to its previous position. This condition, straightaway sets aside all cases whose chief motive is compensation. Moreover, the party that is not favoured should have undergone a net loss. Nevertheless, the results could be biased, due to overriding concern to defend the claimant who is guiltless, in consonance with the objective to inflict punishment on the wrongdoer .

Hence, restorative remedies exhibit such bias regularly, and recover more from the defendant, than he had appropriated; while, apportioning a greater amount than the amount actually lost, to the innocent claimant.

Nevertheless, such remedies, when unequivocally, seen to be desirous of succouring the aggrieved party, constitute measures with remedial objectives that are distinct from punitive measures. Glaring examples of punitive restitution are to be witnessed in cases where the courts desist from granting relief for the reason that the law does not aid a party to a contract that is unlawful .

In the case of *Marsh v Keating, Simpson*, the stockbroker had received a certain amount from Tarbutt the intended purchaser of shares belonged to Keating, who wanted to sell them. It was presumed that Simpson would have received the amount through cheque and he should have deposited the same into his bank account. Simpson had issued a cheque for the same amount, favouring Marsh & Co, the plaintiff company. He had reduced the cheque amount to the extent of fifty percent of his commission .

The plaintiff had deposited the cheque issued by Simpson into the bank account of Marsh & Co, which was with Martin & Co. However, the amount was not transferred to Marsh & Co, since the cheque amount was mixed up with the other credits in the account of Simpson. The court did not accept the contention of the parties of the case as this so called mixing up of cheque amount and the consequent alleged inability to trace the same could not initiate action for trover or wrongful conversion of money.

Accordingly, the court ruled that the limitation did not apply in this particular case and permitted the recovery of the money from the defendants . The decision in *Marsh* is an important decision in the area of restitutionary liability. In common law, recipient liability and equity are interdependent

issues. Equity swings between strict liability and fault. In equity, the liability of a third party recipient arises only when there is a fault. According to their Lordships, this principle is unfair and unjust.

They stipulate that the rule should focus on strict liability, in accordance with the defence of change of position by parties. Therefore, the equity rule is confusing at times and this was the situation that had been encountered in the Marsh case. There is a need for an innovative and clear test that addresses these liability issues, and only then will the defence of change of position by the parties would become effective . In the case of *Holiday v Sigil*, the plaintiff Holiday had lost a Bank of England note worth ? 500.

Holiday can initiate an action against Sigil for the sum of ? 500. There was no defence available to Sigil to counter the claim made by Holiday. Sigil was held liable to pay back the sum of money to Holiday without conducting any inquiry to determine whether there was a fault or knowledge on Sigil's part . The ruling in Marsh resulted in two separate issues. They are first, the degree of fault to be required to establish recipient liability and second, the liability of a recipient of traceable proceeds to the plaintiff.

With regard to the degree of fault on part of the defendant to pay restitution, the court decided that the defendant should have discovered the payment of money, and the defendant must have knowledge about the source from which the money was derived. In the case of *Jacobs v. Morris*, the facts of the case were that the defendant company Messrs Morris had paid a sum of money to the plaintiff company of Jacobs, namely, Hart and Co. The defendant company had relied on the misrepresentation given by the agent

of the plaintiff company that he was empowered to borrow on behalf of the plaintiff company.

The defendant Morris wrote a cheque in the name of Hart and Co, and handed it over to the agent who deposited that cheque into the company's account. Subsequently, this agent withdrew the cheque amount for his personal use. The defendant company Messrs Morris sought restitution from Jacobs for this cheque amount. The trial court depended on the decision in Marsh and held that the partners in Hart and Co must have had knowledge about the deposit of the cheque into their bank account, in order to be made liable.

Since, they did not have any knowledge about the transactions; the trial court held that they were not liable to pay back the amount to the defendant. The appellate court had also upheld this decision of the trial court. Nevertheless, in Reid v Rigby, although the facts were similar to the case of Jacobs v Morris the decision of the court was different. The proceeds of a cheque were spent on the payment of wages to the workers of the defendant's company. The Court of Appeal held that the defendant was liable and directed that restitution had to be made.

The Court elaborately examined the ruling in the Marsh case and held that although the defendant in the present case did not have knowledge of the transactions, the money was spent for the purposes of the defendant and hence the defendant was liable to make restitution. In Lipkin Gorman v Karpnale Ltd, Cass was a partner of the plaintiff company of Lipkin Gorman. He withdrew ? 323, 222 from the plaintiff's client account and used this

money for gambling. Cass lost the money at the defendant's club, namely the Playboy Club Karpnale. The lost money was mixed up with the money of the defendants and it became their property.

Cass absconded, but later on he was apprehended and incarcerated for three years in jail. The plaintiff sued the defendant Playboy Club for restitution. The defendants argued that they did not have any knowledge about the misappropriation of the plaintiff's funds by Cass. They further argued that under equity principle, an innocent recipient of misappropriated funds would not be liable for the receipt of money. They invoked the common law, which favoured such arguments. The House of Lords, in this case, had refused to invoke equity by the defendants.

Their Lordships held that knowledge or fault had to be proved by the defendants, prior to imposing any liability on the Playboy Club. The court had not clarified the issue in the Marsh case, with regard to the ability of the defendant Keating to sue the third party for the value of the property that had been substituted. This clarification was provided in the case of Lipkin Gorman. It had been contended in that case that the defendant had obtained unjust enrichment at the expense of the plaintiff; and that as a consequence; the defendant was under an obligation to make restitution to the plaintiff.

In that case, the House of Lords had decided that Cass automatically became the legitimate owner of the notes that he had withdrawn from Lipkin Gorman's client account. He was authorised to withdraw the amount from the bank but he was not permitted to gamble with the money taken from the account of the client of plaintiff. However, it was not clear as to how the

Playboy Club was unjustly enriched at the expense of the plaintiff Lipkin Gorman, since the money received by it was from Cass, the legal owner of the money.

The plaintiff had a proprietary right in that money, and this proprietary right provided power to the plaintiff to rescind the transfer of ownership to Cass. The unjust enrichment by the defendant at the expense of the plaintiff was established, since the plaintiffs had a proprietary right in that money which was gambled away by Cass. Moreover, the proprietary right had not been lost even when Cass transferred the ownership of the money to the defendant. Hence, the defendant was unable to prevent a claim for unjust enrichment .

In English law, restitutionary remedy is not for compensation for a breach or damage. It requires a restoration of the previous position. The requirement of unjust enrichment by the defendant at the expense of the plaintiff does not mean that such enrichment occurred by committing a wrong doing or by subtraction from the plaintiff. Therefore, plaintiffs can successfully win the claims by proving that a fault had transpired, by which the defendant had enjoyed an unjust enrichment. This fault could be the taking away of the money of the plaintiff or causing damage to him .