TEXT 1

Unjust enrichment

A general equitable principle that no person should be allowed to profit at another's expense without making restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained.

Although the unjust enrichment doctrine is sometimes referred to as a quasi-contractual remedy, unjust enrichment is not based on an express contract. Instead, litigants normally resort to the remedy of unjust enrichment when they have no written or verbal contract to support their claim for relief. In such instances litigants ask a court to find a contractual relationship that is implied in law, a fictitious relationship created by courts to do justice in a particular case.

Unjust enrichment has three elements. First, the plaintiff must have provided the defendant with something of value while expecting compensation in return. Second, the defendant must have acknowledged, accepted, and benefited from whatever the plaintiff provided. Third, the plaintiff must show that it would be inequitable for the defendant to enjoy the benefit of the plaintiffs actions without paying for it.

In some circumstances unjust enrichment is the appropriate remedy when a formally executed agreement has been ruled unenforceable due to incapacity, mistake or impossibility of performance. In certain states, for example, contracts with minors are voidable at the minor's discretion because persons under the age of majority are deemed legally incapable of entering into contracts. But if the minor has received a benefit from the other party's performance before nullifying the contract, the law of unjust enrichment will require the minor to pay for the fair market value of the benefit received.

In other circumstances unjust enrichment is the appropriate remedy for parties who have entered a legally enforceable contract, but where performance by one party exceeds the precise requirements of the agreement. For example, suppose a homeowner and a builder have entered into a legally binding contract under which the builder is to construct a two-car garage. One day the owner returns to her residence and discovers that in addition to constructing a two-car garage, the builder has paved the driveway. The owner says nothing about the driveway but later refuses to compensate the builder for the paving job. The builder has a claim for unjust enrichment in an amount representing the reasonable value of the labor and materials used in paving the driveway.

Suppose, instead, that after completing half the job, the builder tells the owner that he cannot finish the garage as originally agreed, but that he wants to be paid for the work he has done. The owner refuses to pay, arguing that the builder has breached his contractual obligations and is entitled to nothing. A minority of jurisdictions would allow the builder to recover the reasonable value of his services, minus any damages suffered by the owner as a result of the breach. A majority of jurisdictions, however, adhere to the rule that a party who fails to perform contractual obligations has no remedy regardless of the amount of hardship he might endure.

The doctrine of unjust enrichment also governs many situations where the litigants have no contractual relationship. For example, the law finds an implied promise to pay for emergency medical treatment that is neither requested nor consented to by a patient. In some jurisdictions the law finds an implied promise to pay for life-saving medical treatment even when a patient objects to receiving it. As these examples demonstrate, unjust enrichment is a flexible remedy that allows courts great latitude in shifting the gains and losses between the parties as equity and justice dictate.

TEXT 2

LAST WILL AND TESTAMENT

THIS IS THE LAST WILL AND TESTAMENT of me, MARY ANN SUSSEX.

1. I HEREBY REVOKE all wills and testamentary dispositions of every nature and kind whatsoever by me heretobefore made.

2. I NOMINATE, CONSTITUTE, AND APPOINT, my husband, JOHN ROBERT SUSSEX, to be the sole Executor of this my Will. If he is unable or unwilling to act, I THEN NOMINATE, CONSTITUTE AND APPOINT my brother, GEORGE WILLIAM KENT, to be the sole Executor of this my Will.

3. I GIVE, DEVISE, AND BEQUEST all my property of every nature and kind and wheresoever situate to my said Executor for the following purposes:

a) To use his or her discretion in the realization of my estate, with power to my Executor to sell and convert into money any part of my estate not consisting of money at such time or times in such manner and upon such terms, and either for cash or credit or for part cash and part credit as my said Executor in his absolute discretion may decide upon, or to postpone such conversion of my estate or any part or parts thereof for such length of time as he may think best, and I hereby declare that my Executor shall have a separate power to retain any of my investments or assets in the form existing at the date of my death at his absolute discretion to the intent that investments or assets so retained shall be deemed to be authorized investments for all purposes of this my Will.

b) To use his discretion in making elections with power to make all such elections as he shall deem in his absolute discretion to be in the best interests of my estate as a whole, and specifically, and elections as may be necessary under The Income Tax Act and the provisions thereof from time to time in force.

c) To make any division of my estate or set aside or pay any share or interest therein, either wholly or in part, in the assets forming my estate at the time of my death or at the time of such division, setting aside or payment, and I declare that my Executor shall, in his absolute discretion, fix the value of my estate or any part thereof for the purpose of making any such division. setting aside or payment, and his decision shall be final and binding upon all persons concerned.

d) To pay my just debts, funeral, and testamentary expenses, and all inheritance taxes (if any), whether imposed by or pursuant to the law of any domestic or foreign jurisdiction whatsoever, that may be payable in connection with the property passing on my death or in connection with any insurance on my life or in connection with any gift or benefit given or provided by me either in my lifetime or by the survivorship or by this my Will, and I hereby authorize my Executor to repay any such taxes.

i) To pay or transfer the residue of my estate to my beloved husband, for his own use absolutely, and provided that if my husband should die before myself, to give that share in equal portions to my sisters and brothers alive at the time of my death, for their own use absolutely.

4. If any person shall become entitled to any share in this my Estate before attaining the age of majority, the share of such person shall be paid to the parents, or parents, or guardian (as the case may be) of that person, in trust for that minor; and the receipt signed by that parent, or parent(s), or guardian (as the case may be) shall be sufficient to discharge my Executor of his obligations under this my will.

IN TESTIMONY WHEREOF I have to this my Last Will and Testament written upon this and the preceding pages of paper, subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_.

SIGNED, PUBLISHED, AND DECLARED by the said Testator as and for the Testator's Last Will & Testament, in the presence of us, both present at the same time, who, at the Testators request, in the Testators presence and in the presence of each other, have hereunto subscribed our names as witnesses.

witness witness