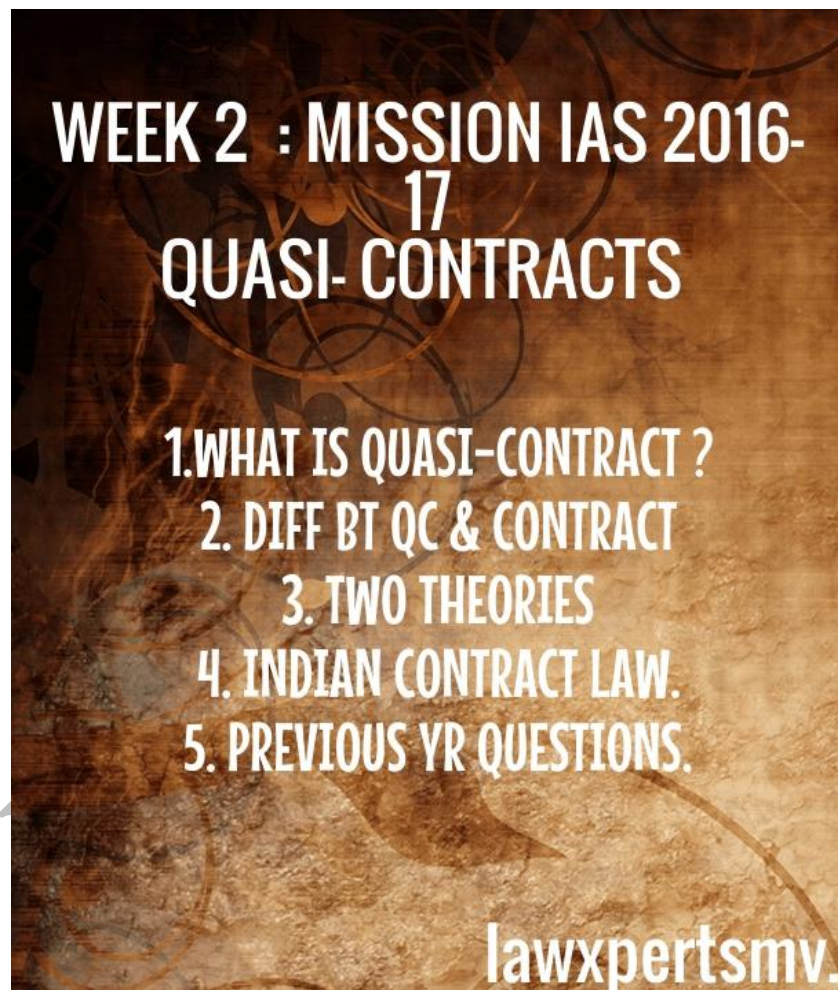


# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.



**WEEK 2 : MISSION IAS 2016-  
17  
QUASI- CONTRACTS**

1. WHAT IS QUASI-CONTRACT ?
2. DIFF BT QC & CONTRACT
3. TWO THEORIES
4. INDIAN CONTRACT LAW.
5. PREVIOUS YR QUESTIONS.

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**WHAT IS QUASI-CONTRACT [QC] ?**

- No agreement. No actual offer or acceptance.
- But a contract of fictitious nature will be created by law so as to conform what is just, prevent unjust.

**DIFFERENCES BETWEEN A CONTRACT & QUASI CONTRACT :**

<b>Basis</b>	<b>Quasi Contracts</b>	<b>Contracts</b>
Essential elements for formation of contracts.	are absent.	are present.
Obligation.	imposed by law	created by consent of parties
Remedies	Section 73 provides same remedies as provided in case of breach of contract.	SAME AS SEC.73

**RATIONALE : 2 THEORIES :****#1THEORY OF UNJUST ENRICHMENT:[ TOFUE]**

- Founded by LORD MANSFIELD in MOSES V. MACFERLAN
- Unjust enrichment has been defined as: "A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." Black's Law Dictionary, Eighth Edition (Bryan A. Garner) at page 1573.
- [Sahakari Khand Udyog Mandal Ltd vs Commissioner of Central Excise & Customs](#) ((2005) 3 SCC 738). "Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else."
- When claim arises ? A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.

**#2- THEORY OF "IMPLIED-IN-FACT"CONTRACT [TOIFC]**

- Replaced TOFUE.
- Founded by LORD HALDANE in SINCLAIR V. BROUGHAM : Common law has only actions : contractual or torts. No place of QC.
- LORD PARKER - Reasoning - If you compel TO PAY an *ultra vires* loan to ; then would it not mean that you are enforcing a contract which is against public policy. i.e., why are enforcing a notional/fictional contract ; when express contract itself is void.
- HOLT V. MARKHAM ; SCURRTON LJ : Lord mansfield doctrine is "now discarded"

HOW SAD ! BUT DONT WORRY. COZ.

**BACK TO TOFUE!( RESTORATION OF THEORY OF UNJUST ENRICHMENT):**

- WHY ? Implied contract theory cannot restrict the scope of TOFUE, which is based on Natural Justice & equity.
- WHO Restored it back ? Thanks to Lord Wright ; His reasoning in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour* (1943) as follows: "It is clear that any civilised system of law is bound to provide remedies for what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another, which it is against his conscience to keep"

- Also said that; third category of common law remedies = QUASI-CONTRACT.<sup>1</sup> OR RESTITUTION.

### NATURE OF QC:

- Imposed by law
- Duty of the party to perform, not promise.
- Based on principle of equity & good conscience.
- only against specific persons, not against the whole world.
- Althou' - no contract bt parties ; they're treated as if there is contract.
- Same Remedies under S.73.
- Ensures Right to money. Unliquidated.'

### INDIAN LAW :

Provisions relating to various quasi contracts are contained in : CHAPTER V section 68 to sec 72 of the contract Act, 1872.

Sec 68	69	70	71	72
<b>Supply of Necessaries</b>	Reimbursement of money due	Obligation to pay for benefit out of non gratuitous act	Responsibility of Finder of Goods	Person receiving goods are money by mistake
<p>a person, who supplies another person, who is incapable of entering into a contract, with necessaries of life is entitled to get a share from the property of the latter.</p> <p>Eg: A supplies food to B, a lunatic. A is entitled to be reimbursed from B's property.</p> <p><b>WHAT IS NECESSARY&gt;</b> It is a relative fact to be determined w.r.t to fortune &amp; circumstances of the case.</p> <p>1. <u>CHAPPEL V COOPER</u> : food = necessary ; exclude the luxuries,</p> <p>2. <u>PETERS V FLEMING</u> : thou'ornamental is luxury; a watch for a U.G. student is a necessary.</p> <p>Burden of proof : lies on the person who gives it .</p>	<p>a person, who is interested in payment of money which was supposed to be paid by another but pays it, is entitled for reimbursement from the said person.</p> <p><b>Conditions:</b></p> <p>a) payer must be interested in making the payment b) But should not be bound to pay c) defendant should be under legal compulsion to pay d) Payment not to himself but to anr party.</p> <p><u>GORDHANDAS SEKSARIA V. STATE OF GONDAL</u></p> <p>A purchases B's Plot. B failed to pay govt revenue. To save the plot from being sold, A pays govt revenue arrears. B should reimburse.</p>	<p>a person has received lawful services from another person, which the former had not asked for but needed at that moment, the other person is entitled to be compensated for the services that were rendered.</p> <p><b>Conditions :</b></p> <p>a) lawfully do /deliver something to anr. b) not intending to do gratuitously c) anr person should enjoy it.</p> <p><u>ST. OF W.B.V. B.KMONDAL</u> Govt asks to construct storage. then says no contract under Sec.175(3) of GOI 1935 ; therefore no money for the builder.</p> <p>Gajendrakar.J. - As the govt has enjoyed the benefits - has no right to reject the works.</p>	<p>a person who finds goods belonging to another person and takes the custody of the goods is subjected to the responsibilities of having the possession of the property under bailment and cannot use it for his own good.</p> <p><u>UNION OF INDIA V. AMAR SINGH:</u></p> <p>If a finder of goods, therefore, accepts the responsibility of the goods, he is placed vis-a-vis the owner of the goods in the same position as a bailee.</p> <p>READ ABOUT R&amp;D OF BAILOR &amp; BAILEE.</p>	<p>a person who receives money or goods by mistake or under compulsion is liable to return it.</p> <p>Norwich Union Fire Insurance Society Ltd v Price Ltd(1934), where payment was made on the basis that a cargo of fruit had been destroyed, whereas in fact it had been resold.</p> <p><b>Conditions :</b></p> <p>a) Mistake of fact or law is recoverable.</p> <p>SRI SRI SHIBA PRASAD SINGHV.MAHARAJA SRISH CHANDRA NANDI : Amount received by mistake shouldnot be legally due.</p> <p>b) Refund of tax money paid without being is due is recoverable.</p> <p>S.T.O. Banaras V. Kanhaiya lal singh.</p>

<sup>1</sup> Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

**PREVIOUS YEAR QUESTIONS OF UPSC :**

1. QC ARISES OUT OF JUDICIAL PRINCIPLES & NOT OUT OF CONTRACTUAL PRINCIPLES.
2. MONEY PAID BY MISTAKE. DISTINCTION OF M OF FACT & LAW
3. MINOR & NECESSARIES
4. LAW SHOULD PREVENT UNJUST ENRICHMENT.

**THE END .**

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