

# Unjust Enrichment and Promises for Benefit Received

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## A. Unjust Enrichment

Assume that you mistakenly transfer \$1,000 via Venmo to a service provider instead of the agreed-upon \$100. What legal grounds do you have to require the return of the \$900 overpayment? Note that you don't have a claim for breach of contract or tort against the service provider (why not?). Nevertheless, allowing the service provider to retain the \$900 seems unjust.

Luckily for you, equity recognizes that, under certain circumstances, such a mistaken overpayment is actionable on a non-contractual and non-tortious basis. There are various terms for this cause of action, which are essentially synonymous for our purposes: unjust enrichment, restitution, quasi-contract, and contract implied-in-law. It's crucial to understand that although some of these terms incorporate the word "contract," this is not a cause of action in contract law because it is not rooted in the parties' promises or their voluntary understandings. Instead, it is based on the principle that retaining the benefits under these circumstances would be unjust and unjustified.

Restitution is a broad subject sometimes taught as a standalone course, and this module will only scratch the surface. It even has its own restatement—the Restatement of Restitution and Unjust Enrichment, now in its third edition. Section 1 of that Restatement set forth the general rule: "A person who is unjustly enriched at the expense of another is subject to liability in restitution."

While the scope of the rule seems almost limitless, that is not the case. As the Restatement explains:

The concern of restitution is not, in fact, with unjust enrichment in any [] broad sense, but with a narrower set of circumstances giving rise to what might more appropriately be called unjustified enrichment.... [which] is enrichment that lacks an adequate legal basis; it results from a transaction that the law treats as ineffective to work a conclusive alteration in ownership rights.

Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. c.

When such unjustifiable enrichment occurs, the law mandates that the enriched party must return the benefit or its value to the other party. However, there are circumstances where the law of unjust enrichment explicitly prevents recovery. Two related principles are at play here. Firstly, there is no liability for “an unrequested benefit voluntarily conferred.” Restatement (Third) of Restitution and Unjust Enrichment § 2(3). Essentially, if a party chooses to confer a benefit instead of entering into a contract, they cannot demand compensation and are considered “volunteers.” Secondly, the law protects individuals from a “forced exchange.” Restatement (Third) of Restitution and Unjust Enrichment § 2(4). This typically applies when a party receives services they did not request and would not have necessarily purchased at market value. Liability is denied in such cases.

The next case applies those principles.

### **Sparks v. Gustafson**

750 P.2d 338 (Alaska Supreme Court 1988)

MATTHEWS, Justice.

Robert J. Sparks, Jr., executor of his father’s estate (Estate), appeals from a superior court decision ordering the Estate to pay \$65,706.07 to the plaintiff, Ernie Gustafson, in compensation for management services that Gustafson rendered to the Estate and for maintaining and improving Estate property. The central issue presented here is whether it is unjust to allow the Estate to retain these benefits without paying for them. In particular, Sparks argues that Gustafson gave his services to the Estate gratuitously, without the Estate’s knowledge or consent.

### **Facts and Proceedings**

The decedent, Robert Sparks, Sr., and the plaintiff, Ernie Gustafson, were personal friends and business associates for many years. In 1980 Sparks purchased a one-half interest in the Nome Center Building. Gustafson managed the building for Sparks without charge until Sparks died on March 1, 1981. Thereafter Gustafson continued to manage the building and collect rents on behalf of Sparks, Sr.’s estate, with the knowledge and approval of the executor, Robert Sparks, Jr. Gustafson did not request any compensation for his services.

Under Gustafson’s management, Nome Center operated at a loss. The Estate deposited \$10,000 in a Nome Center account to cover operating expenses, but the amount was not sufficient to meet the necessary costs of insurance, mortgage payments, utility bills, and repairs. Gustafson often paid Nome Center expenses out of his own pocket. Maintenance and

remodeling work were performed by Gustafson, using in part his own funds. Although he mailed monthly reports of the Nome Center's income and expenses, these reports did not include all of his own expenditures.

In February 1982, the Estate signed a document entitled "purchase agreement" which indicated that Gustafson had purchased the building from the Estate, and would assume the deed of trust as soon as the purchase details could be worked out. However, no purchase details were ever agreed upon. The Estate sold the building to a third party in February, 1983, and Gustafson ceased to manage the property at that time.

On July 14, 1983, Gustafson and his business corporation, Nome Business Venture, Inc., filed suit against the Estate and the executor in Nome, claiming that the defendants breached an oral agreement to sell the Nome Center Building to Gustafson. Plaintiffs subsequently filed an amended complaint which further alleged that Gustafson was entitled to recover for funds and services that he expended on the building under a statutory or equitable lien theory. Defendants filed an answer and counterclaimed for an accounting of all monies collected and expended on the building.

At trial the superior court . . . concluded that it would be inequitable to allow the Estate to retain the benefits that Gustafson had conferred upon Nome Center at his own expense. The court ordered the Estate to pay Gustafson \$65,706.07 in compensation for the services and improvements that he conferred upon the Estate during his two years of managing the Nome Center Building. This appeal followed.

[A discussion of certain procedural issues is omitted]

## **II. Discussion on the Merits: Unjust Enrichment**

Unjust enrichment exists where the defendant has received a benefit from the plaintiff and it would be inequitable for defendant to retain the benefit without compensating plaintiff for its value. E.g., *Bevins v. Peoples Bank & Trust Co.*, 671 P.2d 875, 881 (Alaska 1983); *Restatement of the Law of Restitution* § 1, comment a (1937). Sparks claims that plaintiffs failed to prove either element of unjust enrichment: first, that the Estate received any benefit from plaintiffs, and second, that if a benefit was received then its retention would be unjust.

A person confers a benefit upon another if he gives the other some interest in money, land or possessions; performs services beneficial to or at the request of the other; satisfies a debt of the other; or in any way adds to the other's advantage. *Restatement of the Law of Restitution* § 1, comment b (1937). In this case Gustafson made substantial repairs and improvements to the

Nome Center, provided management services that kept Nome Center operating, and paid debts incurred by Nome Center, all arguably on the Estate's behalf. There is no question that Gustafson conferred a benefit upon the Estate.

Even where a person has conferred a benefit upon another, however, he is entitled to compensation only if it would be just and equitable to require compensation under the circumstances. *Restatement of the Law of Restitution* § 1, comment c (1937). Courts will allow the defendant to retain a benefit without compensating plaintiff in several situations, one of which is relevant to the case at hand: where the benefit was given gratuitously without expectation of payment. *Murdock–Bryant Construction v. Pearson*, 146 Ariz. 48 (1985). See also Dawson, *The Self–Serving Intermeddler*, 87 Harv. L. Rev. 1409 (1974).... Appellants argue that this situation is present in the case before us.

This court has not yet addressed the circumstances which give rise to a finding of gratuitous intent. A good discussion of this issue in the context of a decedent's estate can be found in *Kershaw v. Tracy Collins Bank & Trust Co.*, 561 P.2d 683 (Utah 1977). In that case the decedent's best friend provided a variety of services to the decedent's widow, including chauffeuring, buying groceries, running errands, and performing minor repair work. *Id.* at 684. The court looked at the extent of the services provided to the widow, the closeness of the relationship between the parties, and the fact that the plaintiff never sought compensation until after the widow died. The court found that the widow had not been unjustly enriched, since plaintiff's services were not necessary for the widow's existence and were of the sort which could reasonably be expected from a long time friend. *Id.* at 687.

In this case there was a similarly close relationship between the plaintiff and the decedent. It appears that Gustafson managed the Nome Center Building for the decedent without requesting compensation, in recognition of many long years of friendship and business association together. At trial, the executor testified that he thought Gustafson would continue to manage the building for two years after Sparks' death out of the goodness of his heart, without expectation of payment. Gustafson never requested compensation for his services during his tenure as the Nome Center manager for the Estate. The closeness of the parties' relationship and Gustafson's failure to request compensation in a timely manner suggest that Gustafson offered his services to the Estate gratuitously.

However, the services that Gustafson performed for the Estate were not the sort which one would ordinarily expect to receive from a friend as a mere gratuity. Gustafson spent approximately five hours a day for two years collecting rents for Nome Center, soliciting new tenants, making repairs and improvements, paying utility, insurance and mortgage bills out of

his own pocket when rental income fell short of expenses, and performing other general maintenance and management services for the Estate. These are the types of extensive business services for which one would ordinarily expect to be paid. We therefore agree with the trial court that Gustafson's services were not offered gratuitously....

The judgment of the superior court is AFFIRMED.

### Notes and Questions

1. Do you think the court succeeded in distinguishing Sparks from Kershaw? What is the injustice in Sparks?
2. Should Sparks, Jr. have protected the estate's interest by monitoring the situation and clarifying matters with Gustafson? Should Gustafson have indicated his expectation of payment to Sparks, Jr. before doing the work? Should either party's omission bear on the claim for restitution?
3. Problems:
  - a. Assume that the facts otherwise being as in *Sparks* except that Gustafson had painted the exterior of the building while Sparks, Jr. was out of town because, Gustafson testified, he had expected Sparks, Jr. to object. But, Gustafson argued, Sparks, Sr. surely would have wanted the job done. Further assume that the white paint increased the fair market value of the building. Is the estate liable for the increased value? Is it liable for the value of Gustafson's services?
  - b. Assume that the facts otherwise being as in Sparks except that Sparks, Jr. told Gustafson soon after Sparks Sr.'s death that he was making no promises of remuneration for Gustafson's work, which were nonetheless appreciated. Is the estate liable for Gustafson's services?
4. Paul is a professional lumberjack who is routinely hired to cut trees in his clients' yards. Occasionally, while driving through his clients' neighborhoods, he identifies trees that, in his good faith professional opinion, are on the verge of collapsing and potentially causing significant damage to nearby houses. When he takes the initiative to cut down these precarious trees, under what circumstances, if any, can Paul demand compensation at the fair market value for such services?

**Note: Unjust Enrichment and Contract Law**

In *Sparks*, the plaintiff, Gustafson, lacked a valid cause of action under contract law. The estate did not promise to compensate him for his services, and a breach of contract claim requires at least one promise that has been allegedly breached. Indeed, as emphasized earlier, claims of unjust enrichment are distinct from those based on contracts.

However, the cause of action for unjust enrichment has a complex and significant relationship with contract law (which explains its inclusion in most contract law courses). The first principle in this relationship is that “restitution is subordinate to contract” and that “[c]ontract is superior to restitution as a means of regulating voluntary transfers.” Restatement (Third) of Restitution and Unjust Enrichment § 2 cmt. c. This means that if the parties have reached an enforceable contract and fully performed it, neither can reallocate their benefits using a claim for restitution. For example, if Alice sold her car to Bob for \$10,000, Bob has no claim for unjust enrichment against Alice, even if it turns out the car is worth less than \$10,000. Although Alice was enriched by the contract at Bob’s expense, this enrichment is not considered unjustifiable.

Nevertheless, unjust enrichment plays a crucial role when contractual relationships fail. As discussed in other parts of the course, there are many situations where one party may avoid a contract or cease performance. These situations include, for example, cases where a party can cancel the contract due to a formation defense (such as incapacity or unconscionability) or stop performing due to a material breach or a performance excuse (such as impracticability). Often, by that stage, parties have begun performance, expecting the contract to be upheld, and allowing one party to retain benefits at this point is considered unfair and actionable under restitution.

For instance, revisiting Alice and Bob’s scenario, assume the car was worth less than \$10,000 because it had a serious mechanical issue that Alice knew about but Bob did not. Alice’s failure to disclose this defect would likely constitute misrepresentation, which (as explored in the module on misrepresentation) allows Bob to rescind (cancel) the contract. However, Bob’s primary interest isn’t in canceling the contract per se but in retrieving his \$10,000. He could, therefore, sue for restitution, as it would be unjust and unjustifiable for Alice to retain the \$10,000 from a rescinded contract. Similarly, it would be unfair for Bob to keep the car, so he would need to return it to Alice.

## B. Promises for Benefit Received

The situations we have examined so far involve cases where one party seeks to recover a benefit it conferred on another in the absence of any promise. We observed that, in certain circumstances, the law of unjust enrichment can offer a remedy. But what happens if, after receiving the benefits, the recipient promises to compensate the benefactor for the benefit received? Since this promise is not part of a bargain, it would typically be unenforceable under the standard rules of consideration (do you see why?). Nevertheless, some courts may enforce such promises—based on the previous benefits—under certain conditions.

### **Mills v. Wyman**

20 Mass. 207 (Supreme Judicial Court of Massachusetts 1825)

THIS was an action of assumpsit brought to recover a compensation for the board, nursing, &c., of Levi Wyman, son of the defendant, from the 5th to the 20th of February, 1821. The plaintiff then lived at Hartford, in Connecticut; the defendant, at Shrewsbury, in this county. Levi Wyman, at the time when the services were rendered, was about 25 years of age, and had long ceased to be a member of his father's family. He was on his return from a voyage at sea, and being suddenly taken sick at Hartford, and being poor and in distress, was relieved by the plaintiff in the manner and to the extent above stated. On the 24th of February, after all the expenses had been incurred, the defendant wrote a letter to the plaintiff, promising to pay him such expenses. There was no consideration for this promise, except what grew out of the relation which subsisted between Levi Wyman and the defendant, and Howe J., before whom the cause was tried in the Court of Common Pleas, thinking this not sufficient to support the action, directed a nonsuit. To this direction the plaintiff filed exceptions.

PARKER, Chief Justice.

General rules of law established for the protection and security of honest and fair-minded men, who may inconsiderately make promises without any equivalent, will sometimes screen men of a different character from engagements which they are bound in foro conscientiae to perform. This is a defect inherent in all human systems of legislation. The rule that a mere verbal promise, without any consideration, cannot be enforced by action, is universal in its application, and cannot be departed from to suit particular cases in which a refusal to perform such a promise may be disgraceful.

The promise declared on in this case appears to have been made without any legal consideration. The kindness and services towards the sick son of the defendant were not bestowed at his request. The son was in no respect under the care of the defendant. He was

twenty-five years old, and had long left his father's family. On his return from a foreign country, he fell sick among strangers, and the plaintiff acted the part of the good Samaritan, giving him shelter and comfort until he died. The defendant, his father, on being informed of this event, influenced by a transient feeling of gratitude, promises in writing to pay the plaintiff for the expenses he had incurred. But he has determined to break this promise, and is willing to have his case appear on record as a strong example of particular injustice sometimes necessarily resulting from the operation of general rules.

It is said a moral obligation is a sufficient consideration to support an express promise; and some authorities lay down the rule thus broadly; but upon examination of the cases we are satisfied that the universality of the rule cannot be supported, and that there must have been some preexisting obligation, which has become inoperative by positive law, to form a basis for an effective promise. The cases of debts barred by the statute of limitations, of debts incurred by infants, of debts of bankrupts, are generally put for illustration of the rule. Express promises founded on such preexisting equitable obligations may be enforced; there is a good consideration for them; they merely remove an impediment created by law to the recovery of debts honestly due, but which public policy protects the debtors from being compelled to pay. In all these cases there was originally a *quid pro quo*; and according to the principles of natural justice the party receiving ought to pay; but the legislature has said he shall not be coerced; then comes the promise to pay the debt that is barred, the promise of the man to pay the debt of the infant, of the discharged bankrupt to restore to his creditor what by the law he had lost. In all these cases there is a moral obligation founded upon an antecedent valuable consideration. These promises therefore have a sound legal basis. They are not promises to pay something for nothing; not naked pacts; but the voluntary revival or creation of obligation which before existed in natural law, but which had been dispensed with, not for the benefit of the party obliged solely, but principally for the public convenience. If moral obligation, in its fullest sense, is a good substratum for an express promise, it is not easy to perceive why it is not equally good to support an implied promise. What a man ought to do, generally he ought to be made to do, whether he promise or refuse. But the law of society has left most of such obligations to the interior forum, as the tribunal of conscience has been aptly called. Is there not a moral obligation upon every son who has become affluent by means of the education and advantages bestowed upon him by his father, to relieve that father from pecuniary embarrassment, to promote his comfort and happiness, and even to share with him his riches, if thereby he will be made happy? And yet such a son may, with impunity, leave such a father in any degree of penury above that which will expose the community in which he dwells, to the danger of being obliged to preserve him from absolute want. Is not a wealthy father under strong moral obligation to advance the interest of an obedient, well disposed son, to furnish

him with the means of acquiring and maintaining a becoming rank in life, to rescue him from the horrors of debt incurred by misfortune? Yet the law will uphold him in any degree of parsimony, short of that which would reduce his son to the necessity of seeking public charity.

Without doubt there are great interests of society which justify withholding the coercive arm of the law from these duties of imperfect obligation, as they are called; imperfect, not because they are less binding upon the conscience than those which are called perfect, but because the wisdom of the social law does not impose sanctions upon them.

A deliberate promise, in writing, made freely and without any mistake, one which may lead the party to whom it is made into contracts and expenses, cannot be broken without a violation of moral duty. But if there was nothing paid or promised for it, the law, perhaps wisely, leaves the execution of it to the conscience of him who makes it. It is only when the party making the promise gains something, or he to whom it is made loses something, that the law gives the promise validity. And in the case of the promise of the adult to pay the debt of the infant, of the debtor discharged by the statute of limitations or bankruptcy, the principle is preserved by looking back to the origin of the transaction, where an equivalent is to be found. An exact equivalent is not required by the law; for there being a consideration, the parties are left to estimate its value: though here the courts of equity will step in to relieve from gross inadequacy between the consideration and the promise.

These principles are deduced from the general current of decided cases upon the subject, as well as from the known maxims of the common law. The general position, that moral obligation is a sufficient consideration for an express promise, is to be limited in its application, to cases where at some time or other a good or valuable consideration has existed. [Citations omitted.]

A legal obligation is always a sufficient consideration to support either an express or an implied promise; such as an infant's debt for necessities, or a father's promise to pay for the support and education of his minor children. But when the child shall have attained to manhood, and shall have become his own agent in the world's business, the debts he incurs, whatever may be their nature, create no obligation upon the father; and it seems to follow, that his promise founded upon such a debt has no legally binding force.

The cases of instruments under seal and certain mercantile contracts, in which considerations need not be proved, do not contradict the principles above suggested. The first import a consideration in themselves, and the second belong to a branch of the mercantile law, which

has found it necessary to disregard the point of consideration in respect to instruments negotiable in their nature and essential to the interests of commerce.

Instead of citing a multiplicity of cases to support the positions I have taken, I will only refer to a very able review of all the cases in the note in 3 Bos. & Pul. 249. The opinions of the judges had been variant for a long course of years upon this subject, but there seems to be no case in which it was nakedly decided, that a promise to pay the debt of a son of full age, not living with his father, though the debt were incurred by sickness which ended in the death of the son, without a previous request by the father proved or presumed, could be enforced by action.

It has been attempted to show a legal obligation on the part of the defendant by virtue of our statute, which compels lineal kindred in the ascending or descending line to support such of their poor relations as are likely to become chargeable to the town where they have their settlement. But it is a sufficient answer to this position, that such legal obligation does not exist except in the very cases provided for in the statute, and never until the party charged has been adjudged to be of sufficient ability thereto. We do not know from the report any of the facts which are necessary to create such an obligation. Whether the deceased had a legal settlement in this commonwealth at the time of his death, whether he was likely to become chargeable had he lived, whether the defendant was of sufficient ability, are essential facts to be adjudicated by the court to which is given jurisdiction on this subject. The legal liability does not arise until these facts have all been ascertained by judgment, after hearing the party intended to be charged. [Citations omitted.]

For the foregoing reasons we are all of opinion that the nonsuit directed by the Court of Common Pleas was right, and that judgment be entered thereon for costs for the defendant.

### **Notes and Questions**

1. Would the result have been different if Wyman had promised to reimburse Mills for treating his son while the son was still alive and receiving treatment?
2. The court emphasized that although it may have been morally right for Wyman to honor his promise, the law does not always align with moral principles. Do you agree? Should the law always follow our notion of morality? What arguments, aside from the technicalities of the law of consideration, might justify refusing to enforce a promise like the one in Mills?

3. The court distinguishes between two types of promises based on past actions. The first type is a promise grounded in moral principles or gratitude for the promisee's past actions and the benefits conferred. Those promises, which the *Mills* court refused to enforce, are the focus of this section.

The second type involves situations where a bargained-for promise becomes unenforceable due to a legal "technicality," such as the statute of limitations, the promisor's status as a minor, or the discharge of the promise in bankruptcy. Later, the original promisor makes a new promise—unsupported by additional consideration—to honor the original promise. As the *Mills* court acknowledged, such promises are typically enforceable, although, in some states, they must be in writing.

The *Mills* court explains why the first type of promise is unenforceable while the second type is enforceable. Are you convinced? Why or why not?

### **Webb v. McGowin**

168 So. 196 (Alabama Court of Appeals 1935)

BRICKEN, Presiding Judge.

This action is in assumpsit. The complaint as originally filed was amended. The demurrers to the complaint as amended were sustained, and because of this adverse ruling by the court the plaintiff took a non-suit, and the assignment of errors on this appeal are predicated upon said action or ruling of the court.

A fair statement of the case presenting the questions for decision is set out in appellant's brief, which we adopt.

On the 3d day of August, 1925, appellant while in the employ of the W.T. Smith Lumber Company, a corporation, and acting within the scope of his employment, was engaged in clearing the upper floor of mill No. 2 of the company. While so engaged he was in the act of dropping a pine block from the upper floor of the mill to the ground below; this being the usual and ordinary way of clearing the floor, and it being the duty of the plaintiff in the course of his employment to so drop it. The block weighed about 75 pounds.

As appellant was in the act of dropping the block to the ground below, he was on the edge of the upper floor of the mill. As he started to turn the block loose so that it would drop to the ground, he saw J. Greeley McGowin, testator of the defendants, on the ground below and directly under where the block would

have fallen had appellant turned it loose. Had he turned it loose it would have struck McGowin with such force as to have caused him serious bodily harm or death. Appellant could have remained safely on the upper floor of the mill by turning the block loose and allowing it to drop, but had he done this the block would have fallen on McGowin and caused him serious injuries or death. The only safe and reasonable way to prevent this was for appellant to hold to the block and divert its direction in falling from the place where McGowin was standing and the only safe way to divert it so as to prevent its coming into contact with McGowin was for appellant to fall with it to the ground below. Appellant did this, and by holding to the block and falling with it to the ground below, he diverted the course of its fall in such way that McGowin was not injured. In thus preventing the injuries to McGowin appellant himself received serious bodily injuries, resulting in his right leg being broken, the heel of his right foot torn off and his right arm broken. He was badly crippled for life and rendered unable to do physical or mental labor.

On September 1, 1925, in consideration of appellant having prevented him from sustaining death or serious bodily harm and in consideration of the injuries appellant had received, McGowin agreed with him to care for and maintain him for the remainder of appellant's life at the rate of \$15 every two weeks from the time he sustained his injuries to and during the remainder of appellant's life; it being agreed that McGowin would pay this sum to appellant for his maintenance. Under the agreement McGowin paid or caused to be paid to appellant the sum so agreed on up until McGowin's death on January 1, 1934. After his death the payments were continued to and including January 27, 1934, at which time they were discontinued. Thereupon plaintiff brought suit to recover the unpaid installments accruing up to the time of the bringing of the suit....

In other words, the complaint as amended averred in substance: (1) That on August 3, 1925, appellant saved J. Greeley McGowin, appellee's testator, from death or grievous bodily harm; (2) that in doing so appellant sustained bodily injury crippling him for life; (3) that in consideration of the services rendered and the injuries received by appellant, McGowin agreed to care for him the remainder of appellant's life, the amount to be paid being \$15 every two weeks; (4) that McGowin complied with this agreement until he died on January 1, 1934, and the payments were kept up to January 27, 1934, after which they were discontinued.

The action was for the unpaid installments accruing after January 27, 1934, to the time of the suit.

The principal grounds of demurrer to the original and amended complaint are: (1) It states no cause of action; (2) its averments show the contract was without consideration; (3) it fails to allege that McGowin had, at or before the services were rendered, agreed to pay appellant for them; (4) the contract declared on is void under the statute of frauds.

The averments of the complaint show that appellant saved McGowin from death or grievous bodily harm. This was a material benefit to him of infinitely more value than any financial aid he could have received. Receiving this benefit, McGowin became morally bound to compensate appellant for the services rendered. Recognizing his moral obligation, he expressly agreed to pay appellant as alleged in the complaint and complied with this agreement up to the time of his death; a period of more than 8 years.

Had McGowin been accidentally poisoned and a physician, without his knowledge or request, had administered an antidote, thus saving his life, a subsequent promise by McGowin to pay the physician would have been valid. Likewise, McGowin's agreement as disclosed by the complaint to compensate appellant for saving him from death or grievous bodily injury is valid and enforceable.

Where the promisee cares for, improves, and preserves the property of the promisor, though done without his request, it is sufficient consideration for the promisor's subsequent agreement to pay for the service, because of the material benefit received. *Pittsburg Vitrified Paving & Building Brick Co. v. Cerebus Oil Co.*, 79 Kan. 603, 100 P. 631 (1909); *Edson v. Poppe*, 24 S.D. 466, 124 N.W. 441 (1910); *Drake v. Bell*, 26 Misc. 237, 55 N.Y.S. 945 (Sup. Ct. 1899).

In *Boothe v. Fitzpatrick*, 36 Vt. 681, the court held that a promise by defendant to pay for the past keeping of a bull which had escaped from defendant's premises and been cared for by plaintiff was valid, although there was no previous request, because the subsequent promise obviated that objection; it being equivalent to a previous request. On the same principle, had the promisee saved the promisor's life or his body from grievous harm, his subsequent promise to pay for the services rendered would have been valid. Such service would have been far more material than caring for his bull. Any holding that saving a man from death or grievous bodily harm is not a material benefit sufficient to uphold a subsequent promise to pay for the service, necessarily rests on the assumption that saving life and preservation of the body from harm have only a sentimental value. The converse of this is true. Life and preservation of the body have material, pecuniary values, measurable in dollars and cents.

Because of this, physicians practice their profession charging for services rendered in saving life and curing the body of its ills, and surgeons perform operations. The same is true as to the law of negligence, authorizing the assessment of damages in personal injury cases based upon the extent of the injuries, earnings, and life expectancies of those injured.

In the business of life insurance, the value of a man's life is measured in dollars and cents according to his expectancy, the soundness of his body, and his ability to pay premiums. The same is true as to health and accident insurance.

It follows that if, as alleged in the complaint, appellant saved J. Greeley McGowin from death or grievous bodily harm, and McGowin subsequently agreed to pay him for the service rendered, it became a valid and enforceable contract.

It is well settled that a moral obligation is a sufficient consideration to support a subsequent promise to pay where the promisor has received a material benefit, although there was no original duty or liability resting on the promisor. [Citations omitted] In the case of *State ex rel. Bayer v. Funk*, *supra*, the court held that a moral obligation is a sufficient consideration to support an executory promise where the promisor has received an actual pecuniary or material benefit for which he subsequently expressly promised to pay.

The case at bar is clearly distinguishable from that class of cases where the consideration is a mere moral obligation or conscientious duty unconnected with receipt by promisor of benefits of a material or pecuniary nature. *Park Falls State Bank v. Fordyce*, *supra*. Here the promisor received a material benefit constituting a valid consideration for his promise.

Some authorities hold that, for a moral obligation to support a subsequent promise to pay, there must have existed a prior legal or equitable obligation, which for some reason had become unenforceable, but for which the promisor was still morally bound. This rule, however, is subject to qualification in those cases where the promisor, having received a material benefit from the promisee, is morally bound to compensate him for the services rendered and in consideration of this obligation promises to pay. In such cases the subsequent promise to pay is an affirmation or ratification of the services rendered carrying with it the presumption that a previous request for the service was made. *McMorris v. Herndon*, 2 Bailey S.C.L. 56 (S.C. App. L. & Eq. 1830); *Chadwick v. Knox*, 31 N.H. 226 (1855); *Kenan v. Holloway*, 16 Ala. 53 (1849); *Ross v. Pearson*, 21 Ala. 473 (1852).

Under the decisions above cited, McGowin's express promise to pay appellant for the services rendered was an affirmance or ratification of what appellant had done raising the presumption that the services had been rendered at McGowin's request.

The averments of the complaint show that in saving McGowin from death or grievous bodily harm, appellant was crippled for life. This was part of the consideration of the contract declared on. McGowin was benefited. Appellant was injured. Benefit to the promisor or injury to the promisee is a sufficient legal consideration for the promisor's agreement to pay. *Fisher v. Bartlett*, 8 Me. 122 (1831); *State ex rel. Bayer v. Funk*, supra.

Under the averments of the complaint the services rendered by appellant were not gratuitous. The agreement of McGowin to pay and the acceptance of payment by appellant conclusively shows the contrary.

From what has been said, we are of the opinion that the court below erred in the ruling complained of; that is to say, in sustaining the demurrer, and for this error the case is reversed and remanded.

Reversed and remanded.

### **Harrington v. Taylor**

36 S.E.2d 227 (North Carolina Supreme Court 1945)

PER CURIAM.

The plaintiff in this case sought to recover of the defendant upon a promise made by him under the following peculiar circumstances:

The defendant had assaulted his wife, who took refuge in plaintiff's house. The next day the defendant gained access to the house and began another assault upon his wife. The defendant's wife knocked him down with an axe, and was on the point of cutting his head open or decapitating him while he was laying on the floor, and the plaintiff intervened, caught the axe as it was descending, and the blow intended for defendant fell upon her hand, mutilating it badly, but saving defendant's life.

Subsequently, defendant orally promised to pay the plaintiff her damages; but, after paying a small sum, failed to pay anything more. So, substantially, states the complaint.

The defendant demurred to the complaint as not stating a cause of action, and the demurrer was sustained. Plaintiff appealed.

The question presented is whether there was a consideration recognized by our law as sufficient to support the promise. The Court is of the opinion that, however much the defendant should be impelled by common gratitude to alleviate the plaintiff's misfortune, a humanitarian act of this kind, voluntarily performed, is not such consideration as would entitle her to recover at law.

The judgment sustaining the demurrer is

Affirmed.

### Notes and Questions

1. Can you explain the differences in the results in *Mills* and *Webb*? How about the differences between *Webb* and *Harrington*?
2. The Restatement (Second) § 86 adopted a rule close to the *Webb* holding:

#### § 86 Promise for Benefit Received

- (1) A promise made in recognition of a benefit previously received by the promisor from the promisee is binding to the extent necessary to prevent injustice.
- (2) A promise is not binding under Subsection (1)
  - (a) if the promisee conferred the benefit as a gift or for other reasons the promisor has not been unjustly enriched; or
  - (b) to the extent that its value is disproportionate to the benefit.

However, unlike *Webb*, the Restatement refrains from grounding this rule on the mere notion of “moral consideration.” It explains:

Enforcement of promises to pay for benefit received has sometimes been said to rest on “past consideration” or on the “moral obligation” of the promisor, and there are statutes in such terms in a few states. Those terms are not used here: “past consideration” is inconsistent with the meaning of consideration stated in § 71, and there seems to be no consensus as to what constitutes a “moral obligation.” The mere fact of promise has been thought to create a moral obligation, but it is clear that not all promises are enforced. Nor are moral obligations based solely on

gratitude or sentiment sufficient of themselves to support a subsequent promise.

Illustrations:

1. A gives emergency care to B's adult son while the son is sick and without funds far from home. B subsequently promises to reimburse A for his expenses. The promise is not binding under this Section.
2. A lends money to B, who later dies. B's widow promises to pay the debt. The promise is not binding under this Section.
3. A has immoral relations with B, a woman not his wife, to her injury. A's subsequent promise to reimburse B for her loss is not binding under this Section.

Restatement (Second) § 86, cmt. a. How would *Mills*, *Webb*, and *Harrington* come out today if the respective court had adopted the Restatement's approach?

3. In *Boothe v. Fitzpatrick*, a case cited in *Webb*, "a promise by defendant to pay for the past keeping of a bull which had escaped from defendant's premises and been cared for by plaintiff was valid, although there was no previous request, because the subsequent promise obviated that objection; it being equivalent to a previous request." Can you distinguish *Boothe* from *Mills*? If the promise to pay for the care of the bull is enforceable, why not the promise to pay for the care of a son? Where does the Restatement stand on this question? Can you explain why?
4. Note that according to the Restatement a promise for benefits received cannot be disproportionate to the benefits. The Restatement illustrates

Illustrations:

12. A, a married woman of sixty, has rendered household services without compensation over a period of years for B, a man of eighty living alone and having no close relatives. B has a net worth of three million dollars and has often assured A that she will be well paid for her services, whose reasonable value is not in excess of \$6,000. B executes and delivers to A a written promise to pay A \$25,000 "to be taken from my estate." The promise is binding.

13. The facts being otherwise as stated in Illustration 12, B's promise is made orally and is to leave A his entire estate. A cannot recover more than the reasonable value of her services.

Restatement (Second) § 86, cmt. i. As you surely remember, when it comes to bargained-for promises, courts typically do not question the adequacy of consideration and or save parties from bad deals. What can explain the different approaches to promises for benefit received?

5. Did the plaintiffs in *Mills*, *Webb*, and *Harrington* have a cause of action for the respective defendants' unjust enrichment? What are the similarities and differences between a claim for unjust enrichment and a claim for promises for benefit received?

Do you see how the Restatement's approach positions cases involving promises for benefits received in a middle ground between those based on bargained-for promises and those based solely on unjust enrichment? Do you see why some commentators labeled this cause of action as "promissory restitution"? See Stanley D. Henderson, *Promises Grounded in the Past: The Idea of Unjust Enrichment and the Law of Contracts*, 57 VA. L. REV. 1115, 1118 (1971).

6. Professor Richard Posner provided an economic justification for enforcing promises for benefit received:

The facts of a leading rescue past consideration case, *Webb v. McGowin*, illustrate the benefits that may accrue to the promisor in such cases if the promise is legally enforceable, over and above the benefits of the transfer itself. The rescued person promised to pay his rescuer \$15 every two weeks for the rest of the rescuer's life. This was a generous gift to the extent that the promise was enforceable but a much less generous one to the extent it was not. Had the promisor believed that such a promise was unenforceable, he might have decided instead to make a one-time transfer that might have had a much lower present value than that of the annuity which he in fact promised. Both parties would have been made worse off by this alternative. Hence, it is not surprising that the court held the promise to be enforceable.

Richard A. Posner, *Gratuitous Promises in Economics and Law*, 6 J. LEGAL STUD. 411, 419 (1977). Are you convinced? To what degree does this reasoning apply to all gratuitous promises?

7. The enforceability of promises for benefit received varies among jurisdictions. While some states leave the matter to the judiciary, in other states such promises are enforceable by statute, although the enforceability is sometimes subject to additional conditions. *See, e.g.*, Cal. Civ. Code § 1606 (“... a moral obligation originating in some benefit conferred upon the promisor ... is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.”); N.Y. Gen. Oblig. § 5-1105 (“A promise in writing and signed by the promisor ... shall not be denied effect as a valid contractual obligation on the ground that consideration for the promise is past or executed, if the consideration is expressed in the writing and is proved to have been given ... and would be a valid consideration but for the time when it was given or performed.”).